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IMPACT ASSESSMENT

Accompanying the document

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups

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Introduction

This Impact Assessment considers the case of improving the disclosure of non-financial information by EU companies as part of a broader set of EU initiatives on corporate governance and Corporate Social Responsibility (CSR) aimed at creating a highly competitive social market economy.

Non-financial information is generally seen as **environmental, social and governance (ESG)** information. This can be disclosed in the form of a statement in the annual report, or a separate corporate governance statement, a separate report, or published on company websites, etc. The Accounting Directives[1] already address the formal disclosure of **employee-related and environmental** information by EU companies. However, the need to improve transparency in this field has been highlighted by the Commission in the Single Market Act (hereinafter SMA)[2]. The SMA aims at, *inter alia*, enhancing new, greener and more inclusive growth. In this context, companies' non-financial transparency has attracted attention as a "smart lever" to strengthen citizen and consumer trust and confidence in the Single Market and to encourage sustainable economic growth.

Governance information concerns specifically information on how companies are governed. With the publication of a Green Paper in 2011[3], the Commission has initiated a review of the current EU corporate governance framework. Taking action to improve companies' transparency on their board diversity policy and risk management is one of the first steps of this review. Other initiatives in the field of corporate governance were announced in a Communication presenting an Action Plan on Company Law and Corporate Governance adopted in December 2012[4]. In general terms, information concerning board's diversity and risk management can be considered as part of the broad set of non-financial information that a company may disclose. Increasing transparency in this field has thus the potential to enhance boards' diversity and improve risk management arrangements. It has therefore been deemed appropriate to deal with problems concerning both (i) the lack of transparency of non-financial information and (ii) insufficient diversity in the boards into one Impact Assessment. Nevertheless, as diversity-related issues may go beyond transparency considerations as such, in some sections they are analysed separately. The results of this Impact Assessment show that it is preferable to address the identified problems through one legislative proposal modifying the existing Accounting Directives.

1 PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

1.1. Procedural issues

The initiative on non-financial reporting was included in the Commission's 2012 Work Programme. This Impact Assessment, led by DG Internal Market and Services, was guided and monitored by an Inter-Services Steering Group (IASG). The Group has held six meetings on 27 May, 19 July and 26 October 2011, and on 20 January, 10 February and 26 April 2012. The following Directorates General were invited to participate: Secretariat-General, Legal

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[1] Directive 78/660/EEC on the annual accounts of certain types of companies ("Fourth Company Law Directive") and Directive 83/349/EEC on consolidated accounts("Seventh Company Law Directive")

[2] "Single Market Act-Twelve levers to boost growth and strengthen confidence", COM (2011) 206, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0206:FIN:EN:PDF, p 15

[3] http://ec.europa.eu/internal_market/company/modern/corporate-governance-framework_en.htm

[4] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0740:FIN:EN:PDF.

Service, Health and Consumers Protection, Enterprise and Industry, Eurostat, Employment and Social Affairs, Trade, Environment, Development Cooperation, Energy, Research, Justice, Home Affairs., External Action Service. The Minutes of the last meeting of the IASG were provided to the Impact Assessment Board.

1.2. Recommendation of the Impact Assessment Board

The Impact Assessment Board meeting took place on 20 June 2012. The present document takes account of the comments received by the Board on the draft impact assessment. The report needed to establish more clearly the scope and the scale of the identified problems, and better demonstrate the evidence between the problems and their consequences. Secondly, it needed to better present the content of the options, the differences between them, and provide additional information on the added value of the preferred option vis-à-vis the baseline scenario. Thirdly, the report needed to better consider the impacts of the policy options, by better comparing the advantages and disadvantages of each option.

1.3. External expertise and consultation of interested parties

1.3.1. Public Consultations

Stakeholders have been consulted through various means in order to obtain their views on how to improve non-financial disclosure requirements and practices. A public consultation on disclosure of non-financial information by companies was conducted between November 2010 and January 2011[5]. A summary of the consultation's results is attached to this Impact Assessment (see Annex 1).

Between September 2009 and March 2010 the Commission hosted a series of multistakeholder roundtables on this issue[6]. Consultations with stakeholders also took place through a number of other instruments and fora, including the Member States High-Level Group on CSR, the Multi-stakeholders forum coordination committee[7], or the Accounting Regulatory Committee. The Commission services have also contributed to the work of the Laboratory on Valuing Non-Financial Performance[8]. Moreover, since 2010 the Commission services had a series of bilateral meetings with stakeholders.

As regards board's diversity and risk management, a general consultation on the EU corporate governance framework, was held between April and August 2011[9.] The summary of the consultation results is attached to this Impact Assessment (see Annex 1)[10].

5 Public Consultation on Disclosure of Non-Financial Information by companies. The summary report and the 260 responses received are available at http://ec.europa.eu/internal_market/consultations/2010/non-financial_reporting_en.htm

6 http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/reporting-disclosure/swedish-presidency/index_en.htm

7 http://forum.europa.eu.int/irc/empl/csr_eu_multi_stakeholder_forum/info/data/en/csr%20ems%20forum.htm

8 http://ec.europa.eu/enterprise/newsroom/cf/_getdocument.cfm?doc_id=5310

9 Green Paper on the EU Corporate Governance Framework, http://ec.europa.eu/internal_market/company/modern/corporate-governance-framework_en.htm

10 The full text of the feedback statement is available at: http://ec.europa.eu/internal_market/company/docs/modern/20111115-feedback-statement_en.pdf and the 409 responses received at http://ec.europa.eu/internal_market/consultations/2011/corporate-governance-framework/index_en.htm.

1.3.2. Expert Group

An ad-hoc Expert Group was established with a mandate to provide expert advice to the European Commission on the Impact Assessment. The group included individuals with relevant knowledge and proven experience representing companies, investors, consumer organisations, trade unions, auditors, international guidelines-setting organisations and academia. The experts met four times between July 2011 and January 2012 and discussed questions concerning specific policy proposals, the scope and nature of a potential legislative requirement, the role that non-financial information could play in promoting companies' performance, accountability and efficiency of capital markets. The summaries of these meetings, together with all relevant documents, are available at: http://ec.europa.eu/internal_market/accounting/committees/disclosure_en.htm

1.3.3. External Study

The Centre for Strategy and Evaluation Services (CSES) was contracted to produce a study on "Disclosure of Non-Financial Information by Companies". This research paper includes a qualitative analysis of current non-financial reporting practices as well as a cost/benefit assessment based on a survey. The sample covered 71 EU companies of all sizes established in eight different Member States[11], covering sectors such as food, consumer products, banking and financial services, manufacturing, utilities and mining. The final report is available at http://ec.europa.eu/internal_market/accounting/non-financial_reporting/index_en.htm

2 POLICY CONTEXT

2.1 CSR, Corporate Governance and Non-Financial Information

In the follow up to the SMA, and building on the "EU 2020 Agenda", the Commission has put forward a package of measures (the "Responsible Business Package") to support entrepreneurship and responsible business. The package includes legislative proposals to revise the Accounting Directives and the Transparency Directive, with the aim of improving transparency and promoting sustainable business, and simplifying accounting rules for SMEs, along with two Communications on the "Social Business Initiative" and "A renewed strategy 2011 – 2014 for Corporate Social Responsibility" (hereinafter CSR Communication)

CSR is thereby defined as "*the responsibility of enterprises for their impacts on society*"[12]. A strategic approach to CSR is increasingly important for competitiveness, as it can bring benefits in terms of risk management, cost savings, access to capital, customer relationships, human resource management and innovation capacity. In order to fully meet their social responsibility, enterprises should therefore have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in collaboration with their stakeholders. The aim of such a process is twofold: first, to maximise the creation of shared value, able to generate returns on investment for the company's owners/shareholders at the same time as ensuring benefits for other stakeholders. Second, to identify, prevent and mitigate possible adverse impacts which companies may have on society.

[11] The sample covered the following Member States: Denmark, Germany, Spain, France, Italy, Netherlands, Poland and United Kingdom.

[12] This definition, introduced by the CSR Communication, is consistent with internationally recognised CSR principles and guidelines, such as the OECD Guidelines, the ISO 26000 Standard and the UN Principles on Business and Human Rights.

Corporate governance is traditionally defined as the system by which companies are directed and controlled[13] and as a set of relationships between a company's management, its board, its shareholders and its other stakeholders[14]. A boards' composition, and in particular the diversity of members' profiles, is an integral element in the overall corporate governance of a company. A greater diversity gives the board a wider range of values, views and sets of competences, while reflecting the diversity of the population in Europe. It helps to tackle the phenomenon of "group think", thus enabling the board to perform better in their role of oversight of management decisions.

Corporate governance and CSR can therefore be seen as two distinct yet complementary concepts, as the way a company is directed and controlled is intrinsically linked with its impact on society. A strategic approach to both CSR and corporate governance is increasingly important for competitiveness[15], as it involves crucial aspects for long-term performance. By supporting and promoting these policies, the Commission aims therefore at creating conditions favourable to a full exploitation of the Single Market potential for sustainable growth and employment, based on responsible business behaviour and lasting job creation for the medium and long-term. In order to achieve this broad objective, the CSR Communication proposes a number of actions for the period 2011–2014 including, in particular, a reiteration of the proposal to **improve transparency in the field of non-financial information.** Non-financial transparency represents a key element of a CSR policy as it is linked to the capacity of companies to measure their non-financial performance, and thus their impact on society. Since 2006 the European Parliament has called on the Commission to put forward initiatives in order to strengthen the EU legal framework on social and environmental reporting.

2.2 Existing legislation and international frameworks

The disclosure of non-financial information is currently addressed in EU legislation via the Accounting Directives[16], requiring companies and groups to include where appropriate and to the extent necessary for an understanding of the company's development, performance or position, environmental and employee-related information in their annual or consolidated annual report. Member States, may exempt small and medium-sized companies from this obligation (See Annex 2). Some Member States (including the UK, Sweden, Spain, Denmark and France) have recently introduced national disclosure requirements going beyond this obligation. More details on key developments in EU Member States are given in Annex 3. Overall, this development is part of an international trend away from purely voluntary disclosure[17]. The US, China, India and South Africa, among others, have recently been strengthening regulation in this field[18].

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13 Report of the Committee on the Financial Aspects of Corporate Governance (The Cadbury Report), 1992, p. 15, http://www.ecgi.org/codes/documents/cadbury.pdf.

14 OECD Principles of Corporate Governance, 2004, p. 11, http://www.oecd.org/dataoecd/32/18/31557724.pdf.

15 Such approach emphasises the importance of the interconnections between CSR and the core business strategy of companies, as already underlined in the Commission's 2008 Competitiveness Report.

16 As amended by the "Modernisation Directive, Directive 2003/51/EC , http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0051:EN:NOT

17 "Carrots and Sticks: Promoting Transparency and Sustainability: An update on trends in Voluntary and Mandatory Approaches to Sustainability Reporting", UNEP/KPMG/GRI, 2010, http://www.unep.fr/shared/publications/pdf/WEBx0161xPA-Carrots%20&%20Sticks%20II.pdf

18 In the US SEC issued the "Guidance Regarding Disclosure related to Climate Change" in 2010, requiring listed companies to disclose material climate change-related risks. In China, since 2008 all Chinese State–owned enterprises should establish a CSR information reporting system, on the basis of the Guidelines on Fulfilling Corporate Social Responsibilities issued by SASAC. In India, since 2011 the Security Exchange Board (SEBI) requires listed entities to submit a Business Responsibility Report as part of their Annual

At the global level, several initiatives provide generally accepted, non-legally binding guidance for companies on CSR and sustainability aspects. These include the Ten Principles of the UN Global Compact, the OECD Guidelines for Multinational Enterprises, the ILO Tri-partite declaration of Principles on Multinational Enterprises and Social Policy, the ISO 26000 standard on social responsibility and the UN Guiding Principles on Business and Human Rights. As far as reporting frameworks are concerned, the Global Reporting Initiative (GRI) appears at the moment to be the most widely adopted initiative[19]. Finally, the recently established International Integrated Reporting Council (IIRC)[20] aims at defining a global framework for Integrated Reporting that would bring together financial, environmental, social and governance information in one report. More details on such initiatives are provided in Annex 4.

While the issue of social and environmental disclosure has been on the EU agenda for a decade, a regulatory debate on boards' diversity has only recently been established. In this regard it is important to note that there are no rules at EU level relating specifically to diversity of companies' boards[21]. Current provisions in the field of company law and corporate governance only require the disclosure of some general information relating to boards. In particular, the Accounting Directive requires listed companies and groups to provide a corporate governance statement, which will include, inter alia, information on the composition and operation of the administrative, management and supervisory bodies and their committees[22] (see also Annex 2). At Member State level, the approach towards diversity in the boardroom varies considerably, in particular with regard to gender aspects, which is often regarded as a key aspect of diversity[23]. In order to correct the imbalances, several Member States have taken measures to ensure a stronger proportion of women on boards (e.g. binding or indicative quotas for listed or state owned companies have been introduced in Spain, France, Belgium, Italy and the Netherlands). In certain countries quotas apply only to state owned companies (e.g. in Austria, Finland or Greece). Other countries prefer more flexible measures implemented in the national Corporate Governance Codes or similar acts, such as voluntary targets (Denmark, Austria) or reinforced disclosure on the diversity policy (Finland, Sweden and UK). For more information on the situation in Member States, see Annex 3.

At international level, the GRI Guidelines recommend reporting on the composition of the highest governance body in terms of its diversity, including gender, age group and minority aspects[24]. It also recommends reporting about the process for determining the composition of

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Report, http://www.sebi.gov.in/sebiweb/home/list/4/23/0/0/Press-Releases. In South Africa, since 2010, the Johannesburg Stock Exchange (JSE) requires that all listed companies produce an integrated report, on a "report or explain" basis https://www.saica.co.za/tabid/695/itemid/2344/language/en-ZA/An-integrated-report-is-a-new-requirement-for-list.aspx

19 Other initiatives provide specific guidance or indicators covering a range of ESG aspects. See "Environmental, Social and Governance Indicators", FEE, 2011. Voluntary frameworks are also developed at national level, such as the German Sustainability Code, http://www.nachhaltigkeitsrat.de/en/home/

20 http://www.theiirc.org/

21 Current primary and secondary provisions focus more on non-discrimination as a fundamental principle, and in particular on promoting equality between women and men, rather than on diversity in the boardroom as such. See http://ec.europa.eu/justice/discrimination/law/index_en.htm and http://ec.europa.eu/justice/gender-equality/law/index_en.htm.

22 Article 2 paragraph d(ii) of the Directive 2009/101/EC requires Member States to take measures to ensure compulsory disclosure by companies of information about the appointment, termination of office and particulars of the persons who either as a body constituted pursuant to law or as members of any such body which take part in the administration, supervision or control of the company.

23 "The Gender Balance in Business Leadership", European Commission SWD, 2011, http://ec.europa.eu/justice/gender-equality/gender-decision-making/index_en.htm

24 GRI G3.1 guidelines, point 4.1

this body, including considerations of gender and other aspects of diversity[25]. In the US the Securities Exchange Commission rules on Proxy Disclosure Enhancement[26] require companies to provide information regarding "the consideration of diversity in the process by which candidates for director are considered for nomination".

2.3 On-going and recent EU Initiatives

Besides the above-mentioned initiatives, other EU frameworks address specific topical issues, in particular concerning the environmental area. This includes, for instance, the EMAS scheme[27], where sectorial reference documents and KPIs are developed and suggested. On 10 April 2013 the Commission has adopted the Single Market for Green Products package[28] . As part of this package, the use of the Organization Environmental Footprint (OEF) methodology for reporting, improving and incentivizing environmental performance is also envisaged[29]. Such initiative refers in particular to the quantification and reporting of environmental information, while this Impact Assessment deals with a broader set of aspects related to disclosure of non-financial information. In addition the ICT industry has developed a standard to measure the energy and carbon footprint of its organisations following Key Action 12 in the European Commission's Digital Agenda for Europe[30]. This methodology could be used as a basis for company reporting and is currently being piloted by the industry under the auspices of the European Commission[31]. The work on these initiatives is running in parallel, and they are considered complementary.

Further, the Commission has proposed legislation with the aim of attaining a 40 % objective of the under-represented sex in non-executive board-member positions in publicly listed companies[32] . However, while the proposed gender balance Directive would only contribute to enhancing gender diversity, the present initiative would be more general, aiming at increasing overall diversity. The scope of the two initiatives would therefore be complementary. Indeed, setting objectives does not, for the time being, seem to be the right policy to address broader diversity aspects, such as educational and professional background, age or nationality. Enhanced disclosure of the diversity policy of corporate boards, and a more efficient monitoring of the implementation of the policy, may be likely to contribute to the implementation of the quantitative targets set by companies themselves.

Finally, a political agreement has been reached recently on measures aimed at enhancing diversity on boards of banks and investment firms in the framework of the Capital Requirements Directive IV[33]. Indeed, diversity in board composition should contribute to effective risk oversight by boards of banks, providing for a broader range of views and

[25] GRI G3.1 guidelines, point 4.7

[26] http://www.sec.gov/rules/final/2009/33-9089.pdf. The requirement entered into force in 2010.

[27] EMAS Regulation 1221/2009, in Annex IV defines core environmental KPIs. Flexibility is guaranteed by allowing companies to exclude some of the core KPIs in case they can explain why these are not material for their activity.

[28] http://ec.europa.eu/environment/eussd/smgp/index.htm

[29] http://ec.europa.eu/environment/eussd/corporate_footprint.htm.

[30] COM(2010) 245

[31] http://www.ict-footprint.eu/

[32] Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directories of companies listed on stock exchanges and related measures, 14 November 2012, COM(2012) 614 final. See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0614:FIN:en:PDF

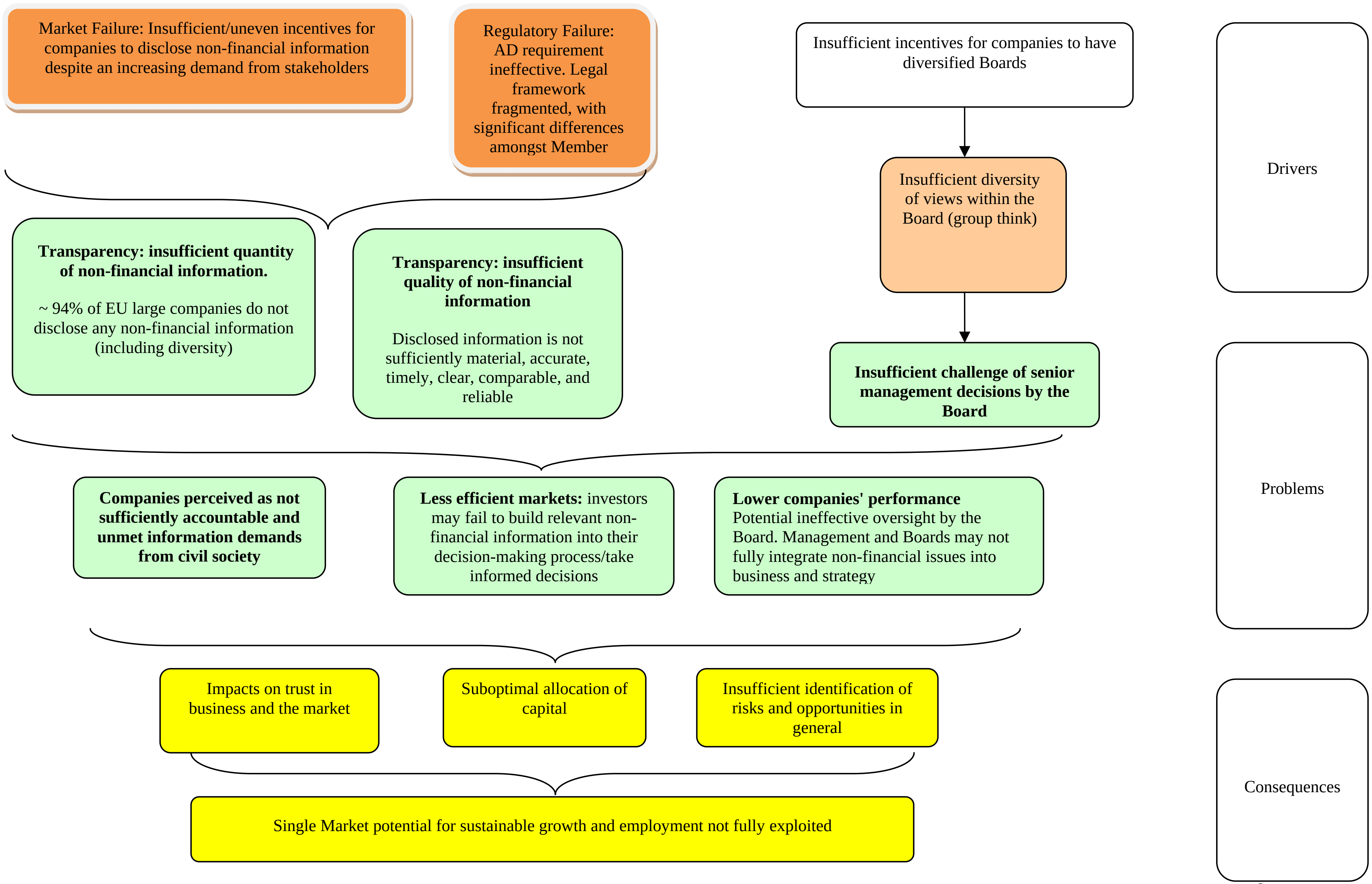
[33] On 20 July 2011, the Commission adopted a legislative package to strengthen the regulation of the banking sector (CRD IV Package). The proposal replaces the current Capital Requirements Directives (2006/48 and 2006/49) with a Directive and a Regulation. The Directive governs the access to deposit-taking activities while the Regulation establishes the prudential requirements institutions need to respect. http://ec.europa.eu/internal_market/bank/regcapital/new_proposals_en.htm

opinion and therefore avoiding the phenomenon of group think. CRD IV therefore introduces a number of requirements, in particular as regards gender balance. More information on these and on other parallel initiatives can be found in Annex 5.

3 PROBLEM DEFINITION AND SUBSIDIARITY

This section outlines the problems associated with the current non-financial disclosure practices by EU companies and with the lack of diversity in boards, which have led to calls for initiatives in these fields. It also explores their drivers and consequences, which will inform the policy objectives discussion following later in this Impact Assessment.

The Commission services have identified two main issues concerning the **inadequate transparency of non-financial information (Problem 1)** as well as **the insufficient diversity in the boards (Problem 2).** Such problems are analysed separately in sections 3.1 and 3.2 below, as they respond to different drivers: the lack of diversity in boards is in particular a matter of corporate governance processes, and the analysis of this problem may go beyond the issues strictly related to transparency. Section 3.3 further analyses the prejudice that such problems pose to specific stakeholders groups, concerning in particular preparers (companies) and users (investors, NGOs, civil society organisations) of information. The drivers and consequences of the above-mentioned problems are depicted in the following problem tree:


Market Failure: Insufficient/uneven incentives for companies to disclose non-financial information despite an increasing demand from stakeholders
Regulatory Failure: AD requirement ineffective. Legal framework fragmented, with significant differences amongst Member
Insufficient incentives for companies to have diversified Boards
Insufficient diversity of views within the Board (group think)
Drivers
Transparency: insufficient quantity of non-financial information.
~ 94% of EU large companies do not disclose any non-financial information (including diversity)
Transparency: insufficient quality of non-financial information
Disclosed information is not sufficiently material, accurate, timely, clear, comparable, and reliable
Insufficient challenge of senior management decisions by the Board
Problems
Companies perceived as not sufficiently accountable and unmet information demands from civil society
Less efficient markets: investors may fail to build relevant non-financial information into their decision-making process/take informed decisions
Lower companies' performance Potential ineffective oversight by the Board. Management and Boards may not fully integrate non-financial issues into business and strategy
Impacts on trust in business and the market
Suboptimal allocation of capital
Insufficient identification of risks and opportunities in general
Single Market potential for sustainable growth and employment not fully exploited
Consequences

3.1 Problem 1: Inadequate Transparency of Non-Financial Information

The environmental and social impacts of business have been the subject of public debates for at least three decades, as some serious incidents, allegedly caused by the business' failure to properly manage their environmental and social risks received significant public attention and media coverage. Market and social pressures on business have grown over the last few years and sustainability has moved up the corporate agenda. In parallel, non-financial performance appears to be considered increasingly important for investment strategies, particularly in the long term, as demand for non-financial information by both Socially Responsible Investors (SRIs) and mainstream investors shows a growing trend[34]. The proliferation of sustainability ratings and indexes could also be brought as additional evidence in this respect[35].

An increasing number of companies has been responding to this pressure by disclosing non-financial information in the Annual Reports, or stand-alone reports. According to recent statistics, the global number of reports per year increased from almost zero in 1992 to ~ 4000 in 2010[36], almost 80% of the world's 250 largest companies report on their sustainability[37], and the number of EU companies publishing sustainability reports using the GRI guidelines increased from 270 in 2006 to over 850 in 2011[38]. However, the analysis and the public consultations conducted by the Commission's services highlighted that, despite such uptake, the pace of progress towards more transparent disclosure practices remains slow, and a majority of users (including in particular investors, NGOs and other civil society organisations) consider the current level of transparency in this field as unable to meet their needs[39]. Specific issues have been highlighted with regard to both **quantity and quality of information** available.

In terms of *quantity*, it is estimated that the total number of EU large companies disclosing non-financial information through the Annual Report or a stand-alone report on a yearly basis amounts to ~2500[40]. It follows that 94% of the total ~ 42000 EU large companies currently do not disclose non-financial information. More than 50% of the reports are published by companies established in four Member States only (UK, DE, ES and FR)[41]. A recent study[42] confirmed that only 36% of companies surveyed have issued at least one sustainability report in the last 3 years, and while 19% are planning to do so in the short term, 38% still have no plans to set up any reporting mechanism.

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34 SRIs have been growing significantly in the last decade: signatories to the UN principles on Responsible Investment (UNPRI) rose by 30 % from August 2010 to 2011, and include now over 900 asset owners and investment managers overseeing $30 trillion in assets. According to Eurosif, the total market reached a total of 5 trillion euros in 2009. See http://www.unpri.org/publications/2011_report_on_progress.pdf, or "Challenges in ESG disclosure and consistency", Goldman Sachs Group, 2009, http://www.sseinitiative.org/files/GS_SUSTAIN__Challenges_in_ESG_disclosure_and_consistency.pdf

35 Including the Dow Jones Sustainability Indexes' the FTSE4Good Index or the Tomorrow's Value Rating

36 http://www.globalreporting.org/Home.

37 "The State of Play in Sustainability Reporting in the European Union", CREM/Adelphi, 2011 p.24, http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=1013&furtherNews=yes

38 http://www.globalreporting.org/NR/rdonlyres/EDEB16A0-34EC-422F-8C17-57BA6E635812/0/GRIReportingStats.pdf

39 Public Consultation Summary report, p. 6

40 www.corporateregister.org. As there is no universally accepted definition of non-financial information, different figures co-exist as regards the total number of companies disclosing non-financial information world-wide and within the EU. For an overview, see CREM/Adelphi, 2011

41 "Global Winners& Reporting Trends", CorporateRegister.com, 2012 http://www.corporateregister.com/crra/help/CRRA-2012-Exec-Summary.pdf

42 "Corporate Sustainability. A Progress Report." KMPG and Economist Intelligence Unit, 2010, http://www.kpmg.com/global/en/issuesandinsights/articlespublications/pages/corporate-sustainability.aspx

Specific issues were also underlined as regards the *quality* of the information currently disclosed. Overall, a majority of users considered that information is often not sufficiently material, balanced, accurate, timely and comparable.[43] The following specific information gaps were highlighted in this respect:

- Companies tend to focus only on their positive performances; reports are often inconsistent over time, or information is not disclosed on a yearly basis; performance-related information is not reported; material negative externalities are often not disclosed.
- Disclosures do not cover aspects of significant relevance for both internal and external stakeholders, particularly as regards risk-management aspects, human rights, and corruption matters.
- The use of Key Performance Indicators (KPIs) is considered "poor" by most users,[44],
- Reports are often not subject to independent verification, with prejudice for the reliability of the information[45].

Existing research supports the claim that the level of quality of information does not meet the users' needs. A report published by UNCTAD in 2010[46] underlines, for example, significant inconsistencies amongst reports, with prejudice for the comparability of the information disclosed.[47]. Significant reporting weaknesses include the provision of irrelevant or missing data, unsubstantiated claims and inaccurate figures.[48]. According to another research[49], for instance, out of 20,000 publicly listed companies recently reviewed through Bloomberg's database, less than 25% publicly reported on a single piece of quantitative data concerning environmental, social or governance issues. As regards human rights in particular, a study conducted by the University of Edinburgh found that information is in most cases isolated and anecdotal[50].

Drivers of the Problem

The inadequate level of transparency determined by the insufficient quantity and quality of non-financial information appears to be caused by both a market and a regulatory failure:

A) *Market Failure*. Despite the progress mentioned above, there is evidence that companies have not been able to provide an appropriate response to users' and societal demand for non-financial transparency. The reason for such failure is to be found in the insufficient and uneven incentives provided by the market: on the one hand, the cost of transparency is certain, measurable and short term, particularly as regards externalities. On the other hand, the

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43 Public Consultation Summary report, p. 5

44 Ibid, p. 10

45 Public Consultation Summary report, p.15, and CREM/Adelphi, 2011

46 "Investment and Enterprise Responsibility Review: Analysis of investor and enterprise policies on corporate social responsibility", UNCTAD, 2010. Based on a sample of 100 amongst the largest MNCs wordwide, http://www.unctad.org/en/docs/diaeed20101_en.pdf

47 Ibid, p. xiv

48 For instance, out of 443 EU companies featuring in the FTSE All World Index between 2005 and 2009, fewer than one in six reported greenhouse gas emissions that covered all corporate activities, while others did not say which activities their data referred to. Survey conducted by Leeds University/Euromed on a sample of 4,000 CSR reports, http://www.see.leeds.ac.uk/news/news-inner/?tx_ttnews%5Btt_news%5D=116&cHash=737fcc26246e7815d368df8eacf08ff5. Reference not available yet.

49 Bloomberg analysis, data provided by email to European Commission services on 9 September 2011

50 "Study of the Legal Framework on Human Rights and the Environment Applicable to European Enterprises Operating Outside the European Union", study prepared by the University of Edinburgh for the European Commission, 2010, http://ec.europa.eu/enterprise/policies/sustainable-business/files/business-human-rights/101025_ec_study_final_report_en.pdf

benefits related to increased non-financial transparency are often perceived as uncertain, long-term, or external to the company. Such asymmetry determines that companies don't have sufficient incentives to disclose non-financial information. One could assume that if their non-financial impacts are not known to stakeholders, companies will have little incentive to adjust their behaviour and to take due account of non-financial externalities into their decision-making. As a consequence, investors' and societal demand remains unmet.

B) *Regulatory Failure*: as explained in section 2.2 above, regulators have already tried to address this failure both at EU and at Member States' level.

– At EU level, an overall majority of stakeholders consulted considers the obligation introduced by the Modernisation Directive as ineffective, mainly due to design weaknesses. In particular, it appears that the filters provided in the current wording (information to be disclosed only "*where appropriate*" and "*to the extent necessary for an understanding of the company's development, performance or position* ") fail to provide a clear legal obligation. This has led the majority of companies to consider the current reporting regime as purely "voluntary".

– Some Member States have implemented legislation going beyond this obligation. However, such requirements vary to a great extent in terms of content and scope. In Denmark, for instance, companies are asked to state whether or not they have a CSR policy, and if they do, to describe its implementation and results. In France, on the other hand, legislation defines a detailed set of indicators that listed and non-listed companies must report on, and requires third-party verification. A majority of the users consulted indicated that the current situation translates into a fragmentation of legal frameworks leading to considerable difficulties, in particular for analysts and investors who are not able to compare or benchmark companies across the Internal Market, or even within the same Member State.

The lack of non-financial transparency may affect specific stakeholders groups, in particular preparers (companies) and users of information (investors, NGOs, public authorities). This relates in particular to the impact it may have in terms of companies **performance** (as companies may not fully integrate non-financial risks and opportunities into their business operations and strategies), **accountability** (as companies do not meet information demands from civil society, and thus are not always perceived as sufficiently accountable), and **efficiency of capital markets** (as investors may fail to build relevant non-financial information into their decision-making processes). Such problems are further analysed in section 3.3 below.

3.2 Problem 2: Insufficient board diversity leading to the lack of challenge of the management decisions by the board

<u>*Nature and scale of the problem*</u>

Boards of directors[51] play a key role in the company, as their composition, dynamics and decisions are in general fundamental for a company's viability and success. The role of the board is in fact to lead the company on behalf of the shareholders by setting the strategic aims and direction, by overseeing the management, by taking account of the risks of the company,

[51] The term 'board of directors' refers to both one tier and two tier systems (non-executive directors, supervisory boards, respectively), according to the corporate governance structure in the concerned Member State.

etc. An effective oversight of the management leads to a successful governance of the company. In this respect, sufficient diversity of competences and views of the board's members, which facilitates a good understanding of the business organisation and affairs, enables the board to exercise an objective and constructive challenge of the management's decisions. Diverse boards "provide a better reflection of a firm's customer base and promote a positive corporate image and greater credibility in the eyes of the public"[52].

Although the fragmentation of data makes it difficult to precisely assess the scale of the problem, it appears that the diversity of European company boards is rather limited. A Report from 2011[53] maintains that, considering a board of 12 members, the current profile of the average European company board would be composed of only 1.5 women, 2 European non-nationals and 1 non-European with an average of 5 CEOs or former CEOs. The average age would be 58.4 years.

Yet, boards with members that have a similar educational and professional background, nationality, age or gender may be dominated by a narrow group-think. This can have a negative impact on the proper checks by the board on the plausibility of information presented to it and can lead to more risk taking, as well as to a suboptimal allocation of capital. Group-think contributed, in many cases, to the failure of an effective challenge of management decisions[54]. Lack of diverse views, values and competences may lead to less debate, ideas and challenge in the boardroom. In this regard, a recent survey among directors[55] calls for more constructive board discussions: along with more time for board work, a better mix of skills and backgrounds of the members leading to tougher and more constructive discussions could contribute to improving corporate governance. Diversity of views can bring to the board innovative and creative thinking, openness and flexibility to respond to the current economic and social challenges, conferring on the company a forward-looking approach. It creates better stakeholder representation and encourages sustainable performance[56]. Research illustrates that more diverse boards have positive impact on corporate governance and explains why more diverse board perform better in their role of management monitors and advisors[57]. Literature points out that more diverse boards are more creative and include

52 See reply of Business Europe to the Green Paper, http://ec.europa.eu/internal_market/company/modern/corporate-governance-framework_en.htm

53 "Corporate Governance Report 2011 - Challenging board performance", Heidrick & Struggles, 2011, p. 35. The selection concerns 400 top companies in 15 countries based on the reference stock exchange.

54 For instance, the British Treasury Select Committee report Women in the City, July 2010, said that: "We believe the lack of diversity on the Boards of many, if not most, of our major financial institutions may have heightened the problems of 'group think' and made effective challenge and scrutiny of executive decisions less effective".

55 "Governance since the economic crisis" McKinsey Global Survey results, https://www.mckinseyquarterly.com/Governance_since_the_economic_crisis_McKinsey_Global_Survey_results_2814

56 "Corporate Governance Report 2009 - Boards in turbulent times", Heidrick & Struggles, 2009, p. 12

57 "Board Diversity", Daniel Ferreira, in "Corporate Governance: A Synthesis of Theory, Research, and Practice", Anderson, R. and H.K. Baker, 2010, pp. 225-242; see also "Board Diversification Strategy: Realizing Competitive Advantage and Shareowner Value", 2009, http://www.calpers.ca.gov/index.jsp?bc=/about/press/pr-2009/feb/diverse-boards-higher-performance.xml Also see ABI, 2011 p. 13. The Report contains a reference to the 2003 'Tyson Report on the Recruitment and Development of Non-Executive Directors', commissioned by the UK Department of Trade & Industry.

different perspectives: people from different backgrounds and with different life experiences are likely to approach similar problems in different ways. More diverse groups are also more creative and produce a greater range of perspectives and solutions to problems[58]. Board diversity can also increase board independence because people with different gender, ethnicity or cultural background might ask questions that would not come from directors with more traditional backgrounds[59]. Boards with diverse members have also access to different resources and connections (e.g. directors with financial industry experience can help firms gain access to specific investors). Firms in which institutional investors comprise a larger fraction of their shareholder bases may surrender to investors' demands for board diversity[60].

Some studies also mention potential negative impacts of diversity, such as in particular possibility of conflicts, lack of cooperation, and insufficient communication between different groups of directors or danger of choosing directors with little experience, inadequate qualifications, or who are present in too many boards because of their diversity characteristics (e.g. they are women)[61]. A recent study also shows, with respect to top management teams' decision-making outcomes, that in stable environments homogeneous groups make better decisions. In contrast, in turbulent situations like the financial crisis, heterogeneous groups perform better[62]. More details on the impact of diversity on companies are provided in section 3.3 below.

A well-functioning board is in general composed on the basis of a broad set of criteria, such as professional diversity, international diversity or gender diversity. A variety of ***professional backgrounds*** helps the board to understand the complexities of the global markets, the company's financial objectives and the impact of business on different stakeholders. In this regard, it is becoming more and more crucial for boards to have directors with specific industry or functional knowledge. This can facilitate their understanding of complex situations (or of the needs of expert advice) and make them be more effective board members. However, it appears for example that 48% of the European boards have no director with a sales or marketing profile, 28% no director with legal expertise and 28% of audit committees (of which boards are increasingly making use of) do not include a chief financial officer (current or former).[63]

In addition, international experience has become a necessity of the business operations worldwide, reflecting the diversity of the customers, suppliers, investors and the overall context. Presence of ***non-national*** board members with an international or regional experience brings a different culture and mind set to the board, enhancing the understanding of local markets and improving the decision-making process[64]. Geographical experience is particularly important for companies that want to expand their activities at the international level. At the European level, research[65] indicates that the European average of non-national directors on the board is 24%, with great disparities across the EU. While in some Member States non-nationals are better represented in the board, for instance in the Netherlands, UK,

[58] "Corporate governance, board diversity, and firm value", Carter Simkins and Simpson, 2003
[59] "The Ultimate Glass Ceiling Revisited: the presence of women on corporate boards." Arfken, Bellar and Helms, 2004
[60] Ferreira, 2010
[61] Ibid
[62] "Opening the Black Box of Upper Echelons: Drivers of Poor Information Processing During the Financial Crisis", Rost and Osterloh, 2010
[63] Heidrick & Struggles, 2011, p. 33
[64] Egon Zehnder, 2010, p. 32
[65] Heidrick & Struggles, 2011, p. 39

where non-nationals account for at least 40% of board members, in other (e.g. Poland, Austria, Germany, Spain and Italy) non-national directors account only for 10-15% of the board members[66].

Lack of ***gender diversity*** appears to be particularly problematic. The proportion of women members of the board is of 13,7% across the EU, while that of women chairing a board is of 3%[67]. This is still the case despite an increasing number of reports that indicate a positive correlation between gender diversity and companies' performance[68]. Research[69] suggests that the more gender diverse boards are, the more likely to hold CEOs accountable. Women attend more meetings, they improve the attendance behaviour of male directors and are more likely to be assigned to monitoring-related committees than men. This has a positive impact on the monitoring intensity of the board[70]. For instance, research conducted on over 500 European companies with a market cap over 150 million euro illustrated a greater profitability of companies with a higher proportion of women executives and board directors[71]. Another recent report found that gender-balanced companies had a 17% higher stock price growth between 2005 and 2007 compared to the industry average and that their average operating profit was almost double than the industry average between 2003 and 2005[72]. Looking at 290 publicly listed companies, a study[73] found that the earnings of those with at least one woman on board were significantly higher than in those with no female board members. Other research[74] indicated that a company led by a female CEO is on average slightly more profitable than a corresponding company led by a male CEO. The share of female board members also has a similar positive impact. It appears that in general having more women may strengthen the boards in terms of internal and external relations (women would know better customers' needs and represent them better), leading to a better decision making. The existing studies may not prove causality, but the positive correlation between gender diversity and company's performance make a good case for the need of gender balance in the boards.

As far as ***age*** is concerned, most boards need to have some spread in age – while the older group can provide experience, wisdom, and usually the economic resources, the middle group carries the major positions of active responsibilities in corporations and in society, whereas

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66 In terms of proportion of boards with no foreign directors, there is an average of 28% at the European level with Poland, Italy, Spain and Denmark accounting for between 42%-68% of such boards, whereas France and UK are leading the way with only 3%-4 % of boards with no foreign directors. See Heidrick & Struggles, 2011, p. 39.

67 European Commission Database on women in the decision making, http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/business-finance/quoted-companies/index_en.htm and "Women in economic decision-making in the EU: Progress report", DG JUST, 2012, http://ec.europa.eu/justice/newsroom/gender-equality/opinion/files/120528/women_on_board_progress_report_en.pdf

68 "Women Matter 1: Gender diversity, a corporate performance driver", McKinsey & Company, 2007; "The Bottom Line: Connecting Corporate Performance and Gender Diversity", Catalyst, 2004; "Women to the Top!", EVA, 2007

69 "Women in the boardroom and their impact on governance and performance", Adams and Ferreira, 2009, pp. 291-309

70 "The Contribution of Women on Boards of Directors: Going beyond the Surface" Nielsen and Huse, 2010.

71 McKinsey and Company, 2007.

72 "Women at the top of corporations: making it happen", McKinsey & Company, 2010 http://www.mckinsey.com/locations/swiss/news_publications/pdf/women_matter_2010_4.pdf

73 "Groundbreakers: Using the strength of women to rebuild the World Economy", Ernst&Young, Deutche Bank Research 2010. See also "The Bottom Line: corporate performance and women's representation on boards", Catalyst 2007, http://www.catalyst.org/publication/200/the-bottom-line-corporate-performance-and-womens-representation-on-boards

74 The Finnish Business and Policy Forum EVA published in 2007 a study (*Female Leadership and Firm Profitability*), covering 14 020 Finnish companies. See www.eva.fi

the younger group has the energy and drive to succeed and plan ahead for the future[75]. However, traditionally boards are made up of very senior people. The average director in Europe is currently 58.4 years old[76]. The national averages range from 55.2 in Sweden to 60 or more in France and Netherlands. Some larger companies encourage senior executives to take up directorships somewhat earlier in their careers, but there is no rapid trend towards reduction in average age.

While the above mentioned criteria of diversity seem of particular importance for the board members' understanding of business, the list is not exhaustive and other aspects of diversity can be regarded as relevant and useful, depending on the situation of the company[77].

Drivers of the problem

A) *Market Failure*: The insufficient board diversity is linked above all with **insufficient market incentives** for companies to change the situation. In this respect, *inadequate recruitment practices* for board members contribute to perpetuating the selection of members with similar profiles. The selection often draws on a too narrow pool of people, non-executive directors are still often recruited through an "old boys' network" from among business and personal contacts of current board members[78] and often the chair or a board member may influence the board invitation. Companies may not always be willing to change these practices. Yet, the lack of transparency around the selection process, as the company does not necessarily advertise the positions available, nor uses a recruitment agency, can represent an important barrier to more diverse board members. Doubts arise therefore as to the incentives to use the wide pool of available talent and expertise for board appointments.

The particular impact that the pipeline for recruiting has for example on gender diversity has been illustrated by different reports[79]. It has been underlined that it is difficult for women to have access to these informal networks of recruitment. Moreover, executive search firms also play a relevant role in providing boards with suitable, but also diverse candidates. A recent report claimed[80], on a more general level, that executive search firms may have a certain image of the company, which will determine their opinion about the person having most chances to be successfully recruited by the company. This means that it is very likely that they will propose candidates similar to the current personnel of the company, not necessarily responding to the diversity needs and challenges of the company, unless diversity requirements are clearly specified.

Furthermore, there is also a lack of tradition of reporting on such issues, given to for instance how the selection usually takes place, i.e. through the "old boys' network". A review[81] of 298 UK FTSE 350 companies points out that disclosure of the nomination committee[82] work

[75] "Composition: diversity and independence of Australian boards", Kang, Cheng and Gray, 2007.

[76] Heidrick & Struggles, 2011, p. 36

[77] In this perspective, one can point to the existing EU equality legislation which covers, next to gender and age, aspects such as: race or ethnic origin, religion or belief, sexual orientation and disability, see: http://ec.europa.eu/justice/discrimination/law/index_en.htm

[78] ABI, 2011, p. 17; see also Review of the role and effectiveness of non-executive directors ("Higgs review"), 2003, p. 39

[79] See for instance Lord Davies's report "Women on boards", 2011, page 17

[80] "Rapport annuel diversités, Mesurer, partager, progresser", 2011, Equity Lab, French Association of Diversity and A. Palt, http://www.afmd.fr/documents/rapport_annuel_diversites_web.pdf, p. 19

[81] "Corporate governance review 2011: A changing climate Fresh challenges ahead" Grant Thornton, 2011. The review took place between May 2010 and April 2011

[82] The nomination committee, where it exists, is responsible for appointing board members and ensuring the appropriate balance of skills, experience, background and independence.

remains poor, compared for instance to audit and remuneration committees. According to this review only 37% (2010: 31%) provide enough information to properly explain nomination committee activity, with eight companies providing no insight at all.

In addition, the problem is also reinforced by an *inadequate transparency on diversit*y, _As mentioned in section 2.2 above, listed companies are already required to disclose information about the composition and operation of the administrative, management and supervisory bodies and their committees. However, the level of information and the extent to which this information is available to public at large depends very much on a case by case basis. Diversity is a relatively new issue obliging companies to learn as they go and they may not always see the need to communicate on it. In any case, such information does not reveal the board's approach in the selection process, the objectives envisaged or how they have been reached. Research shows that companies across the EU do not provide sufficient information on the composition of their boards[83]. Only in 9 out of 33 countries[84] covered, all companies openly reported on their websites about the composition of the board; numerous companies provided the information in the majority of countries, but with different level of disclosure, i.e. many companies provide only the list of board members, without additional details. For instance less than 40% of companies in Czech Republic, Germany, Cyprus, Latvia, Lithuania, Malta, Romania, Slovenia, Slovakia give additional details (e.g. CV), while 100% of them do so in Sweden.

As far as diversity policy as such is concerned, available data[85] for the UK for instance suggests that more than half of the FTSE 100 companies and 35% of the FTSE 250 companies reported having a diversity policy. Only 38% made specific reference to gender diversity. The report underlines the widespread lack of transparency regarding the policies put in place by FTSE 350 companies in order to address diversity on their boards. However, another study[86] maintains that only 19.1% of FTSE 100 and 6.6% of FTSE 250 companies provide a *material* statement on board diversity. It found also that some companies in the UK limit themselves to stating that the benefits of diversity on the board, including gender, have been taken into account when making appointments. According to it, such simple statements do not provide any insight into the board approach, the steps taken to achieve diversity in the boardroom or the challenges and opportunities the company faces.

B) *Regulatory Failure*: The market failures highlighted above have not been sufficiently corrected by appropriate **regulation.** As illustrated in previous sections, there are currently no rules regarding specifically board diversity at EU level. Although some Member States have adopted certain provisions, in particular to increase gender diversity, there are considerable differences between their approaches, while other aspects of diversity are in general not covered.

3.3 Which stakeholders are affected and how?

The impact that insufficient non-financial transparency and board diversity may have on different stakeholders groups is further analysed below:

(i) Preparers: Non-financial and Financial Performance

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[83] Expert report on women and men in decision-making, 2011, not yet published.
[84] Member States, as well as other European and non-European countries.
[85] "Women on Boards", Cranfield University, 2011, p. 34
[86] ABI, 2011,p. 18

"*Only what gets measured gets managed*" is an expression commonly used in respect to financial information. Extending such reasoning to non-financial information, evidence suggests that the lack of transparency has a direct impact on non-financial performance: if non-financial aspects are not measured, they cannot be properly managed.[87] The lack of transparency on risk-management aspects appears particularly important in this respect, since if material information is not communicated to boards or to the annual assembly of shareholders, boards may not effectively perform their oversight duty on risk management[88]. However, this information is often not disclosed, or when it is disclosed, significant differences are found in risk assessments made by companies, even within the same sector[89]. The CSES study shows, for instance, that only a small minority of companies includes any reference to their sustainability performance in the context of their Annual General Meeting (AGM), and that some companies do not have any feedback mechanisms to boards or senior management on non-financial issues[90].

Moreover, a growing body of academic research indicates a positive correlation between better non-financial and financial performance, indicating that front-running companies on sustainability issues tend to outperform their competitors in financial terms, particularly over the medium (3-5 years) to long term (5-10 years). Such findings indicate, for instance, that companies with high ratings for CSR and ESG factors have a lower cost of capital in terms of debt (loans and bonds) and equity, and are generally considered as lower risk than competitors; higher sustainability performance offers a competitive advantage in attracting, motivating and retaining talented employees; positive CSR performance fosters consumer loyalty; failure to adequately manage relationships with stakeholders can result in operational delays, higher costs of insurance and security, problematic relations with governments and local communities, and reputational damage. Overall, evidence suggests therefore that limited non-financial transparency may contribute to negatively affect the performance of companies[91].

With regard to insufficient diversity in the boardroom, as already described in the previous sections, there is growing consensus that a board made up of individuals with a limited variety of skills and experiences may have a negative effect on corporate performance. Insufficient diversity limits the range of perspectives and can decrease board's capacity to mitigate risks and overseeing company strategy.

Some studies show a correlation between the diversity on board and financial performance – companies with more diverse board have better financial results. A recent study examined the relationship between board diversity and firm value for Fortune 1000 firms and found "significant positive relationships between the fraction of women or minorities on the board

87 "What Board Members Should Know About Communicating CSR", Tonello, 2011, http://blogs.law.harvard.edu/corpgov/2011/04/26/what-board-members-should-know-about communicating-corporate-social-responsibility/; "The Impact of Corporate Social Responsibility on Investment Recommendations", Ioannou and Serafeim, 2010; "Strategy and Society: The Link Between Competitive Advantage and Corporate Social Responsibility" Porter and Kramer, 2006

88 "Exploring Emerging Risks", Samuel DiPiazza Jr, CEO PricewaterhouseCoopers, 2009. See also minutes of the first meeting of the ad-hoc Expert group, http://ec.europa.eu/internal_market/accounting/docs/news/24012012-expert-group-minutes_en.pdf

89 See UNCTAD survey, p. 23

90 See CSES, 'Disclosure of non-financial information by Companies', 2011, p.12

91 Tonello, 2011; Ioannou and Serafeim, 2010. See also "Corporate Environmental Management and Credit Risk", Bauer and Hann, 2010. For a review of existing research see "Sustainable Investing: Establishing Long-Term Value and Performance", Deutsche Bank 2012, http://www.dbcca.com/dbcca/EN/investment-research/investment_research_2413.jsp

and firm value"[92]. Another study examined the relationship between demographic diversity on boards of directors with firm financial performance, using 1993 and 1998 financial performance data (return on asset and investment) and the percentage of women and minorities on boards of directors for 127 large US companies. Correlation and regression analyses indicated that board diversity is positively associated with these financial indicators of firm performance[93]. A report commissioned by the California Public Employees' Retirement System (CalPERS) for example, found that companies that have diverse boards perform better than boards without diversity[94]. The report stated that companies without ethnic minorities and women on their boards eventually may be at a competitive disadvantage and have an under-performing share value. On the other hand, other studies show more nuanced results[95].

(ii) Users (NGOs, Public Authorities): Accountability

According to most NGOs and other civil society organisations consulted, insufficient transparency translates into many large companies not being perceived as sufficiently accountable to society at large, or to local communities which may be affected by their operations. If information is not available, companies cannot be held fully accountable for their impact on society. This case is made in particular with regard to some EU companies having operations in developing countries, where national legal frameworks may include weak or no legal obligations to disclose information. Although some evidence suggests, for instance, that the largest European companies are more likely to have a human rights policy than their competitors in other developed countries[96], some NGOs have referred to cases[97] of alleged negative impacts EU companies may have on human rights and the environment in their operations in developing countries. In this framework, insufficient transparency is considered as an important factor inhibiting corporate accountability and responsible behaviour, and it is alleged that non-financial reports often neglect negative environmental and human rights impacts, while choosing to focus on less controversial issues[98]. The CSES study[99] also shows, for instance, that in the great majority of cases no contact information details or feedback mechanisms are disclosed to stakeholders.

This may also have an impact on the level of consumers' trust, as consumers may question, for instance, whether suppliers of products and services respect applicable rules and regulations, and whether consumer protection considerations are effectively taken into account in a company's strategy. According to a recent report on consumer markets in the EU, for instance, "trust" gets the lowest rating of all key components analysed[100].

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92 Carter *et al.*, 2003

93 "Board of Director Diversity and Firm Financial Performance", Erhardt,Werbel and Shrader, 2003

94 "Diversity on Corporate Boards. Stanford Centre on the Legal Profession." Rhode and Packel, 2009

95 See "The Gender and Ethnic Diversity of US Boards and Board Committees and Firm Financial Performance." Carter, D'Souza, Simkins, and Simpson. See also Adams and Ferreira, 2009.

96 "Human Rights Policies and Management Practices of Fortune Global 500 Firms: results of a survey", Ruggie, 2006

97 University of Edinburgh, 2010

98 "Principles & Pathways: Legal opportunities to improve Europe' Corporate Accountability Framework", ECCJ, 2010, http://www.corporatejustice.org/IMG/pdf/eccj_principles_pathways_webuseblack.pdf

99 CSES, 2011, p.17

100 The Consumer Market Monitoring Dashboard gives access to the findings of a survey based on over 600 000 market assessments in the 27 EU countries, Norway and 50 European consumer markets. http://ec.europa.eu/consumers/strategy/docs/EC_Market_Monitoring_2011_en.pdf

(iii) Users (investors): less efficient capital markets

Most of the investors consulted suggest that the current situation constitutes a significant constraint to their capacity to build relevant non-financial information into their valuation models. Such remark is made with regard both to the quantity and the quality of the information available.

The current disclosure practices render thus difficult for investors to benchmark and assess non-financial performance across industries and Member States. Insufficient transparency in this field may consequently affect the most efficient allocation of capital across the Internal Market. Pointing to the need to increase transparency, some stakeholders have also underlined the importance of gaining new momentum in the aftermath of the financial crisis, arguing that the incentive structure of the pre-crisis markets has led to a significant number of market participants to focus excessively on short-term profits, and not sufficiently consider long-term value creation[101]. It has also been argued that the failure of many investors to take adequately account of material non-financial issues when calculating future earnings of investee companies contributes to market volatility and systemic market risk.[102]

Information relating to how diversity is dealt with at the board level is also important as it reflects how differences are considered, valued and managed. It provides information on corporate culture and governance practices that enable investors to take more informed voting and investment decisions[103]. It ensures investors and stakeholders in general that the board members have the right mix of skills and knowledge to best govern the company. In this regard one should consider that investors have different investment strategies and objectives that make them need and require different types of information, i.e. not only relating for example to the long term financial performance of the company, but also to the expertise and competences of the board members. For instance lenders appreciate and recognise the competitive advantage of a credible and respected board, while other stakeholders are more confident when there is evidence of a governance structure relying on the expertise of a well-qualified board. The more diverse the board is, the more likely it is that more competencies and skills are brought in for the benefit of the company. Therefore, by leaving out relevant information relating to the diversity policy and to the objectives and how they are evaluated, companies fail to provide investors with useful information. In this regard, respondents to the 2011 consultation on the EU Corporate Governance Framework [104] indicated that disclosure of diversity policy would enhance transparency and would enable investors to take informed decisions as to the governance practices of the company. It would in addition reduce group think. Investors in particular indicated that, if companies are transparent on their diversity policy, they can judge better the level of ambition of the company and monitor progress. Lack of disclosure means insufficient communication about the needs in terms of qualifications necessary for their particular type of business.

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[101] "The consequences of Mandatory Corporate Sustainability Reporting", Ioannou and Serafeim, 2011

[102] "Valuing non-financial performance", European CSR Alliance Laboratory on Valuing Non-financial Performance, http://www.csreurope.org/data/files/toolbox/Market_valuation_final_report_beta.pdf. See also the summary of the investor workshop on non-financial disclosure hosted by the European Commission in October 2010, p. 2-3, http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/reporting-disclosure/swedish-presidency/files/summaries/2-investors_en.pdf

[103] See the new SEC rule on Proxy Disclosure Enhancement, Background and overview of the amendments, p. 38, summary of responses to the consultation, http://www.sec.gov/rules/final/2009/33-9089.pdf

[104] Green Paper on the EU Corporate Governance Framework, http://ec.europa.eu/internal_market/company/modern/corporate-governance-framework_en.htm

Moreover, according to the 2011 Board of Directors survey[105] there was a strong call for increased transparency essential to regaining confidence and trust in corporate boards and directors. Other reports[106] underline the need for companies to engage in the reporting on diversity matters in order to have an effective prevention of discrimination and a promotion of diversity.

3.4 Baseline Scenario: How will the problem evolve without action?

3.4.1 Transparency of non-financial information

The weaknesses of the current legislation, both at EU and at Member States level, do not provide stakeholders and companies with sufficient clarity on what disclosures should be expected and legal certainty on what information is legally required. It is therefore unlikely that significant improvements on quantity or quality of non-financial information would materialise in the absence of action clarifying this. Potential evolution of international frameworks and voluntary initiatives could possibly contribute to an overall positive evolution. However, the following should be considered in a scenario without action:

– In contrast to financial information, currently there is no generally accepted standard-setter for non-financial information. GRI appears, to date, the only institution providing specific guidance for reporting, but this remains a set of guidelines (rather than a standard) proposed by a private institution and applied only by a limited number of companies on a voluntary basis. Moreover, the pace of the uptake remains very slow and there is no clear indication that a significantly higher number of companies plans to sign up to GRI in the short term.

– Guidance is also provided by other normative frameworks. However, these are also voluntary frameworks and they define principles and guidelines, rather than reporting standards. Their potential impact on the quality and quantity of information is therefore limited. The multiplicity of such frameworks is also brought up by some stakeholders as one of the reasons contributing to poor consistency and comparability.

– The IIRC is also working towards the creation of a generally accepted integrated reporting framework. Although a first discussion paper was published in November 2011[107], such platform is still at a very early stage of development and significant results can only be expected in the medium/long term.

No existing scheme or voluntary disclosure mechanism is therefore expected to yield significant solutions to the identified problems. Non-financial information can also be disclosed in a number of different forms other than formal reporting (i.e. internal communication to employees, informal communication with stakeholders, product or environmental labels). However, informal channels are considered complementary, and no substitute for formal disclosures, and they are not deemed appropriate to respond to the stakeholders' demand for increased transparency, in particular as regards the users' needs.

[105] Heidrick & Struggles, 2011
[106] See "Rapport annuel diversités, Mesurer, partager, progresser", 2011, http://www.afmd.fr/documents/rapport_annuel_diversites_web.pdf, page 19
[107] http://www.theiirc.org/the-integrated-reporting-discussion-paper/

3.4.2 *Boards' diversity*

It is difficult to assess to which extent the diversity of boards would improve without any action at EU level, in particular as most of the available data focuses on gender diversity only. In this regard it is important to underline that over the last 8 years the number of women on boards has increased with an average of 0,5% per year[108]. At this rate, it will take another 50 years to reach a more balanced situation, i.e. at least 40% of each sex. The positive correlation between diversity of boards and the performance of companies, as indicated by some studies, has not led to a significant improvement of the composition of boards across the EU.

Some large companies with highly visible public profiles may feel the pressure of scrutiny and react better to public demands for enhanced diversity[109]. However, this is difficult to predict. More companies are becoming aware that greater participation by women in management, including at the highest levels, has a positive impact on the business and have taken measures to foster women's leadership potential. This includes in particular improving work-life balance or coaching programmes[110]. Nevertheless, most companies do little to facilitate the crucial final stage, i.e. recruitment to board positions.

Social pressure and a culture that supports women may also improve the situation, as it seems to be the case in some Nordic countries (e.g. Sweden, where the board seats held by women increased from 20% in 2004 to 28.7% in 2010[111], despite the fact that there is no quota legislation). Discussions over the value of diversity may lead boards to reflect more on their needs and reflect them better in their recruitment strategies. Yet, the extent and the pace of change cannot be predicted with any degree of certainty. Other aspects of diversity, such as age, nationality or educational and professional background, appear to raise less interest than gender diversity. However, it is left to companies to decide how to take into account the need of a right balance in terms of geographical origin or educational and professional background of board members. A gender diversity initiative at the EU level would obviously have positive impact by increasing the number of women in the boardroom, but the beneficial effects of other aspects of diversity would not be taken into account. In conclusion, without any action at EU level regarding diversity (at large) of the board members, the legal framework risks to remain fragmented.

3.5 The EU's right to act

According to the subsidiarity principle, the EU should act where it can provide better results than intervention at Member State level. In addition, EU action should be limited to what is necessary in order to attain the objectives, and comply with the principle of proportionality. Several policy options are considered in section 5 below. The proportionality of each option has been analysed with regard to its effectiveness and cost-efficiency. In all cases, in order to ensure that companies are subject to the same requirements across the EU, it appears preferable to legislate through EU law rather than at Member State level.

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108 European Commission database on women and men in decision-making, which covers 33 countries (EU-27, HR, MK, TR, RS, IS and NO). The data on companies cover the largest (by market capitalisation) nationally registered (according to ISIN code) constituents of the blue-chip index maintained by the stock exchange in each country. The total sample covers 598 companies with a minimum of 10 and a maximum of 50 from each country, http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/business-finance/quoted-companies/index_en.htm

109 Egon Zehnder, 2010, p. 14

110 See examples of measures in European Commission SWD, p. 59, http://ec.europa.eu/justice/gender-equality/gender-decision-making/index_en.htm

111 Egon Zehnder, 2010, p. 20

The disclosure of non-financial information is already regulated at EU level by the Accounting Directives. Nevertheless, investors and other users demand a greater level of harmonisation in this field. Moreover, the diverging approaches taken at Member State level could determine even greater differences within the EU Internal Market, as they may lead to further differences in terms of scope, detail or content of the requirements. Different reporting requirements at Member States level could also potentially undermine the level playing-field across the Internal Market. Sustainability-related information also appears, by its own nature, as a cross-national matter.

As regards diversity issues, current initiatives are much fragmented, some Member States being more advanced in their reflections, others only at the beginning. In the absence of an action at EU level, in many Member States there will be no progress or very slow progress in the coming years. Furthermore, current rules of the Accounting Directives already oblige companies to disclose their corporate governance arrangements, in particular regarding the composition and functioning of their boards. EU instruments appear to be more suitable in assuring higher transparency, consistency and comparability of the information disclosed, as well as in bringing about changes relating to diversity in the boardroom. Coordinated action at the EU level is therefore necessary, and this initiative complies with the subsidiarity principle.

Finally, the Treaty on the Functioning of the European Union (art.11) has also reinforced the role of sustainable development as one of the main objectives for the EU, based in particular on a high level of protection and improvement of the quality of the environment. Sustainable development is also affirmed as one of the fundamental objectives of the Union in its relations with third countries. Furthermore, the Treaty (Article 8 and 10) provides that in all its activities the Union shall aim to eliminate inequalities, and to promote equality, between men and women, and to aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

4 OBJECTIVES

The overall policy objective of the proposal is to contribute to the Single Market's potential to create sustainable growth and employment, in line with the objective set out in the EU 2020 agenda of a "smart, sustainable and inclusive growth". As explained above, more transparency for internal and external stakeholders is considered to be of key importance for companies to improve management of risks and deliver better results. Increased transparency (including on diversity in the boardroom) is expected to enhance the trust citizens have in business and in markets and enable a more efficient allocation of capital, as well as provide for a better-informed decision making (e.g. of investors). Enhancing boards' diversity would contribute to make them more effective in their role of management oversight. The specific objectives of the proposal can be summarised as follows:

I. Enhance companies' overall performance through (i) better assessment and greater integration of non-financial risks and opportunities into their business strategies and (ii) improved and more diversified oversight by the board;

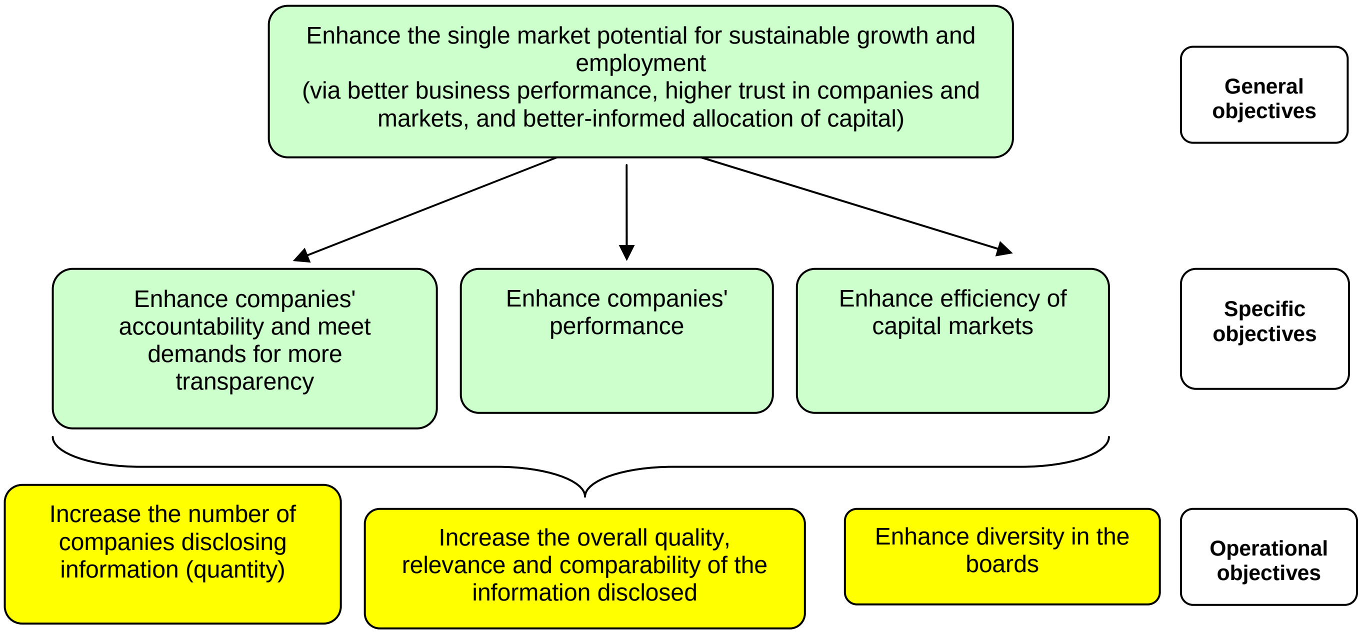
II. Enhance companies' accountability and meet broadly-shared demands for more transparency;

III. Enhance efficiency of capital markets by helping investors to integrate material non-financial information into their investment decisions.

In operational terms, the objectives of the proposal can be summarised as follows:

1. Increase the number of companies disclosing non-financial information (quantity of information)
2. Increase the quality, relevance and comparability of the information disclosed.
3. Enhance diversity in the boardroom

In achieving these objectives, avoiding undue administrative burden on companies, especially on the smallest ones, is very important. The objectives are depicted visually in the following objective tree:



5 Policy Options - description and analysis

5.1 Options relating to Increasing Transparency of Non-Financial Information (Objectives 1 and 2)

A wide range of possible policy options can be considered relevant when contemplating initiatives to improve transparency of non-financial information. The analysis carried out by the Commission services took into account the different characteristics that each policy option may entail, including in particular the following issues:

Form of the disclosure: disclosure could take different forms. For instance, information could be disclosed in the form of a **statement,** to be included in the Annual Report (as currently required by the Accounting Directives). It could also be disclosed in the form of a **detailed, stand-alone non-financial report,** which could be published as a separate document or annexed to the Annual Report.

Narrative or KPI-based disclosure (Reference): different options could be considered when setting the methodology and detail of the disclosure. Disclosures can be **narrative** or based on **Key Performance Indicators**. KPIs may be defined by the company itself, or refer to international frameworks, or be defined at EU level. The latter option would in effect imply the creation of an EU standard for non-financial reporting.

Nature of the requirement: legislation could take the form of a **mandatory requirement**, or could provide a more flexible framework, such as a "**report or explain" requirement**. In this case, companies may have to comply with an obligation to report, or provide a reasoned explanation as to why they do not report. The proposed requirement may also include other incentives for companies to disclose information on a voluntary basis.

Content of the disclosure: there is no universally accepted definition of non-financial information. The current text of the Accounting Directives refers to *("..including..") environment and employees-related* matters. In general terms, topics considered as most important by stakeholders and covered by existing international frameworks include, inter alia, social, environmental, human rights, and anti-corruption aspects. Such list is not exhaustive, and other areas may be covered, such as aspects relating to product safety, consumer protection, competition, etc. Moreover, non-financial disclosures can also include information on governance, including diversity. Within the above mentioned areas, the disclosure may include, inter alia: a description of a company's policy; its results and performance; risk management aspects, methodology and analysis used to assess performance, etc.

Third-party verification: currently, the Accounting Directives require that the information included in the Annual Report is verified for *consistency* with the financial statements[112]. This applies to environmental and social information too. Other forms of verification could be considered, such as verification of processes, audit of activities, etc.

Scope and Legal instruments: more details are given in section 5.3 below.

On this basis, several combinations of options have been examined. Those options or combinations of options being *prima facie* or least effective were discarded, while the packages of options (broad policy options) that were considered most relevant are described and analysed below. The options concerning respectively Objectives 1 and 2 (Increasing quantity and quality of non-financial information) and Objective 3 (enhancing boards' diversity) are described and compared in sections 5.1 and 5.2 below. A more detailed analysis is provided in Annexes 6 and 7.

5.1.1 Description of Broad Policy Options

The Commission services have analysed three main policy options (one of them with three sub-options), plus the "no policy change" scenario, which would leave unchanged the relevant provisions of the Accounting directives **(Policy Option 0).** The options presented below vary in regard to the form of the disclosure, the reference and the nature of the requirement. As a consequence, they are not all mutually exclusive.

1. Require a statement in the Annual Report (Option 1)

Option 1 considers the possibility of strengthening the existing requirement to disclose a statement on non-financial information in the Annual Report. In order to address the specific

[112] Art 51a (e) of the Fourth Directive states that the statutory audits shall also contain an opinion concerning the consistency or otherwise of the annual report with the annual accounts for the same financial year

information gaps and improve the quantity and quality of information, such option would modify the baseline scenario by requiring that

- material information relating to at least social human rights, anti-corruption and bribery matters is disclosed, in addition to environmental and employees-related matters
- within these areas, the disclosure should include a description of (i) the companies' policies, (ii) performance and (iii) risk-management aspects, relying on existing international frameworks.

As further explained in Annex 6, such elements have been identified by a broad majority of stakeholders as key aspects in order to obtain an overview of the non-financial performance of companies. Most international frameworks require disclosure of information on these topical areas. However, the list provided is not intended to be exhaustive, and other information should be disclosed provided it is material. Those companies that do not have a specific policy in one or more of these topical areas would be at least required to explain why this is the case.

2. Require a Detailed Report (Option 2)

This option considers the possibility of introducing a new requirement to disclose non-financial information in the form of a **detailed, stand-alone non-financial report**. Such report would have to be drafted in accordance with existing international frameworks. It would consequently be significantly more detailed than a disclosure in the form of a statement, although it should cover at least the same topical areas identified in Option 1, as well as any other issues that the company may consider relevant. Based on the nature of the requirement, three sub-options are considered:

- **Option 2.a** considers the possibility of requiring companies to provide such a detailed report on a **mandatory basis.**

- **Option 2.b** considers the possibility of requiring detailed reporting on a **"report or explain basis**". This would allow companies to provide a report, or explain why they fail to do so.

- **Option 2.c** considers the case for **voluntary reporting**. Companies choosing to disclose a detailed report on a voluntary basis would be exempted from the obligation to disclose non-financial information in other forms, provided that: (i) the report covers the same topics and content identified above, (ii) it makes reference to international frameworks, and (iii) it is annexed to the Annual Report. There would be no mandatory obligation to provide a detailed report, nor to give an explanation if a report is not provided.

3. Set up a mandatory EU Standard (Option 3)

Option 3 deals with the possibility of setting up **a mandatory EU Standard**, which would constitute a framework for disclosing non-financial information. Rather than relying on existing frameworks, companies would be required to disclose information complying with a set of EU-based **KPIs.** Such standard would cover at least the same topical areas and elements mentioned in Option 1 above - as such elements have been identified by a broad majority of stakeholders as key aspects in order to obtain an overview of the non-financial performance of companies. This option would consequently require a disclosure in compliance with a detailed set of indicators, with a level of detail at least comparable to Option 2. An overview of the proposed policy options is given in Table 1 below.

Table 1 – Summary of Policy Options					
Option	**Nature of Requirement**	**Form**	**Reference**	**Topics**	**Estimated Cost of compliance***
0. No change	Only where appropriate	Statement	Business-relevant KPIs	[including] information relating to environmental and employee matters	0
1. Require a disclosure in the Annual Report	Mandatory	Statement	Business-relevant KPIs, relying on International Frameworks	Policies, performance and risk-management aspects concerning at least Environmental, Social, Employee, Human rights, Corruption	€600 to 4300
2.Detailed Reporting	a) Mandatory b) Report or Explain c) Voluntary	Report	Report to be drafted in accordance with International Frameworks	Same topics as Option 1, but more detailed information	a) €33000 to €604000 b) €33000 to €604000 (compliance) or €600/1000 (explanation) c) 0
3. EU Standard	Mandatory	Report	Detailed list of KPIs (Standard) to be defined	Same topics as Option 1, but more detailed information	€33000 to €604000
**The cost of compliance is estimated in terms of administrative burden compared to the current situation. The cost of Option 0 is consequently nil*					

> **Verification**: The current verification requirements under the Accounting Directives would remain unchanged under all the described options. This means that, as any other aspect of the annual report, non-financial information would have to be checked for *consistency* with the financial statements. Stakeholders referred to verification costs as significant, a consideration confirmed by the results of the CSES study. Notwithstanding the potential benefits related to verification, the Commission services consider that, by not requiring additional verification of non-financial information, transparency can be improved while keeping the administrative burden low.

In Annex 6, each option is assessed in detail in regards to its effectiveness in meeting the objective of increased transparency (higher quantity and quality of information), as well as on some limiting factors. These include its efficiency (compliance cost), acceptability to stakeholders, effects on competitiveness and coherence with other relevant EU legislation. The administrative burden related to each option is also assessed in Annex 8. A comparative summary of the analysis of the broad policy options is provided below.

5.1.2 Comparative Analysis of broad Policy Options

Enhanced transparency is seen as a desirable objective, since it could bring benefits for preparers (companies) as well as for users (mainly investors, NGOs and other external stakeholders). However, it has to be recognised that providing additional information to stakeholders, in the form of a statement or a detailed report, also has a cost. The main costs include, *inter alia*, the resources that companies would have to devote to collecting data, drafting the statement or reports, potentially publishing and auditing them, training staff, etc. Broad social and environmental impacts are difficult to quantify and also depend on specific companies' behaviour. It is assumed that such impacts proportionally increase with the effect that the policy option has on the quality and quantity of social and environmental information available.

Option 0 (No change) does not appear to be an effective approach for dealing with the problems. The current reporting requirements and voluntary initiatives by companies have proved to be ineffective in achieving the policy objectives. Despite recent improvements, only approximately 6% of EU large companies are reporting and the quality of the information disclosed is mixed. This failure has a negative economic impact due to the fact that relevant risks and externalities are not fully captured in the accounting practice and investors cannot adequately assess companies' non-financial performance.

Option 1 (Disclosure in the Annual Report) would improve the quantity of information, as it would require concerned companies to disclose material information in the Annual Report. Moreover, the current requirement would be expanded to new topical areas, as information should include social, human rights, anti-corruption and bribery matters in addition to environment and employees-related aspects[113]. Minimum harmonisation would be introduced as regards the content of the disclosure: it is expected that the requirement to include information on policies, performance, and risk-management would benefit the quality and comparability of the disclosure, and improve companies' sustainability awareness. Companies would incur higher compliance costs expected to be in a range between 600 and 4300 euros per year per company (see Annex 9). Overall, economic benefits are expected from better management of risks and allocation of capital, enhanced trust in business and better resources management. However, it is difficult to quantify such long-term benefits and they would depend on how non-financial aspects are integrated in managers and investors' strategies and practices. As regards environmental and social impacts, the option is expected to positively affect businesses' conduct raising reputational costs for misbehaviour and increasing peer pressure.

Option 2 (Detailed Reporting) could have an overall greater impact on transparency than Option 1. The increase in the number of companies reporting would be the same for Option 2a (Mandatory), whereas it would be uncertain for Options 2b and 2c. Quality could benefit from a requirement to provide a detailed report drafted in accordance with international frameworks, as information would be more comprehensive and granular, and the use of KPIs could have a positive impact on comparability. On the other hand, it has been pointed out that imposing detailed disclosure requirement may result in a 'tick-the-box' exercise, with only limited impact on real companies' behaviour[114]. The difference in terms of economic, social and environmental benefits compared to Option 1 cannot therefore be precisely assessed, although it is expected that greater transparency would determine higher benefits. However, the administrative burden resulting from a mandatory reporting obligation, at the current level of development of tools, would be significantly higher, particularly in the short term. The

[113] A vast majority of the stakeholders consulted agreed that information concerning human rights and corruption-related matters should be part of the non-financial information disclosed by companies. See Public Consultation Summary report, pp.10 to 12

[114] UNEP/KPMG/GRI, 2010

annual cost of producing a report is estimated to be between 33000 and 604000 euros per year per company.[115]

Option 2a (mandatory), is not considered cost-effective on the basis of the high administrative burden. In **Option 2b** (report or explain) the administrative burden would be equal for companies opting to provide the report (and thus bear the same compliance cost as in Option 2a). Companies opting to provide an explanation would at least bear the related costs, estimated to be comparable to the lowest range of the cost estimate given for Option 1 (600/1000 euros)[116]. Overall, the Commission services estimate that it be less effective than Option 2a, although it has the potential to generate peer pressure and provide an effective incentive for companies.

Option 2c (voluntary) intends to recognise and promote best practices of companies reporting on a voluntary basis. Its effectiveness in terms of quantity of information would be uncertain. At the same time, for companies deciding to report, it would guarantee the same improvements in quality as Option 2a and similar economic benefits. Lastly, while the overall impact on society and environment would be weaker than Option 2a, proactive engagement in detailed reporting should not result in a 'tick-the-box' exercise. Such option would carry no additional administrative burden, as the disclosure of a detailed report would remain voluntary.

Option 3 (Mandatory EU Standard) could increase significantly the quantity and quality of disclosed information.. An EU standard designed in a way that is able to meet the needs of preparers and users could also maximise the comparability of the information. Moreover, this option would generate economic benefits resulting from better management and allocation of capital and an overall positive environmental and social impact. However, those positive effects would be subjected to the completion of a long and uncertain process of development and implementation of such standards, including thorough consultation with stakeholders. Moreover, the majority of business associations, experts and most stakeholders underlined the need for sufficient flexibility (also internationally) and the dangers of a 'one-size-fits-all' approach. As regards compliance costs, at the current level of development of tools, option 3 would be comparable to Option 2a in terms of administrative burden, or even higher. Option 3 is therefore not considered cost-effective at this stage.

The table below summarises how each policy option is assessed against the criteria of effectiveness in meeting the objectives; efficiency (compliance costs); competitiveness; and coherence with other EU legislation.

Table 2 – Assessment of the Policy Options

	Effectiveness		Efficiency (compliance cost)	Competitiveness	Coherence with EU legislation
	Quantity	Quality			
0. No change	0	0	0	0	0
1. Require a disclosure in the Annual Report	+	+	+	+	+

[115] More details provided in annex 9

[116] According to an assessment made by the Danish government, a comparable disclosure would cost around 870 euros per company http://www.dcca.dk/graphics/publikationer/CSR/CSR_and_Reporting_in_Denmark.pdf, p. 12. More details are provided in Annex 9

2.Detailed reporting	**a) Mandatory**	++	+	--	+/?	+
	b) Report or Explain	+/?	+	-	+/?	+
	c) Voluntary	?	+	+	+	+
3. Set up a mandatory EU standard		++	+	--	?	+
Magnitude of impact as compared with the baseline scenario (baseline is indicated as 0): ++ strongly positive; + positive; – – strongly negative; – negative; ≈ marginal/neutral; ? uncertain; n.a. not applicable (Commission Services Analysis).						

The table below summarises how each category of stakeholders would view the policy options:

Table 3 – Assessment of the Policy Options by Stakeholders Group				
		Preparers	Users/ investors	Users/ NGOs
0. No change		0	0	0
1. Require a disclosure in the Annual Report		≈	+	+
2. Detailed reporting	**a) Mandatory**	- -	+	++
	b) Report or Explain	-	+	+
	c) Voluntary	++	-	- -
3. Set up a mandatory EU standard		--	+	+
Commission Services Analysis, based on the results of the consultations				

5.1.3 Preferred option

Having compared the different options, **the preferred policy option** appears to be a a smart mix of mandatory (statement) and voluntary (detailed reporting) disclosure requirements (**option 1 and option 2c**). Companies would be required to disclose material non-financial information in the form of a statement in their Annual Report. Those companies that do not have a specific policy in one or more topical areas would be at least required to explain why this is the case. For companies willing to prepare a detailed report on a voluntary basis, the proposed policy mix would provide an exemption from the disclosure obligation described under Option 1, provided that: (i) the report covers the same topics and content, (ii) it makes reference to international frameworks, and (iii) it is included in the Annual Report. This provision builds on existing practices and provides a limited but useful incentive to improve the quality of those reports. Information would be disclosed in reference to high quality, generally accepted international frameworks, and verified for consistency due to the inclusion in the Annual Report.

More details on the choice of instrument and scope of application are given in sections 5.3 and 5.4 below.

5.2 Options Relating to Enhancing boards diversity (Objective 3)

Different types of measures aiming at enhancing board diversity and based also on techniques other than disclosure can be envisaged, ranging from an improvement of the existing recruitment policies to a more or less binding obligation for companies to enhance their board diversity. A summary and analysis of these different options is outlined below. A more detailed presentation and analysis is provided in Annex 7.

5.2.1 Description of the broad policy options

In the "**no policy change "scenario (option 0)**, any possible action to increase board diversity would have to be taken by individual Member States and/or companies on a voluntary basis. According to the **option 1**, companies would be required **to disclose their board diversity policy** with regard to various aspects, including in particular age, gender, nationality or educational and professional background[117]. The disclosure requirement would be part of the corporate governance statement and would be included in the annual report (see section 5.2.3. below). The statement would present the objectives of this policy, its implementation and the results obtained. Companies who do not have a diversity policy would not be obliged to put one in place, but only to explain why this is the case. **Option 2** would mandate companies to take into account **diversity as one of the criteria for the selection of a board candidate**. Companies would be obliged to consider not only the expertise of a given candidate, but also to which extend he/she would make the board as a whole more diverse. **Option 3** would put on companies **a binding obligation to establish a policy** concerning diversity for boards. Companies would have to determine the content of this policy, establish targets and assess their achievement. It should also be noted that the option of introducing quotas has been discarded, as it is the subject of a separate Commission initiative.

5.2.2 Comparative analysis of the broad policy options

Each option has been assessed taking into account its effectiveness in reaching the objective, efficiency (compliance costs), acceptability to stakeholders, effects on competitiveness, coherence with other EU initiatives and impact on fundamental rights. This assessment can be found in Annex 7. On the basis of this appraisal, a comparative analysis of the preliminary policy options has been conducted and it is summarised below.

The preliminary analysis points to enhanced disclosure as the best approach in order to improve the overall diversity of boards. The **'no policy change'** scenario**/option 0** has been discarded as it does not seem to allow for sufficient improvement of the current situation. The progress would be slow or limited, unless Member States take action, as well as fragmented at the EU level. It would depend very much on the practices of companies and national debates on the issue. In addition, it could be seen as a missed opportunity to propose a complementary measure to the one on gender, in order to enhance diversity in the boardroom.

Option 1 (disclosure of diversity policy) would contribute to enhancing transparency and informing the market of corporate governance practices. Thus it would put indirect pressure

[117] Companies may also include in their reporting other aspects of diversity which they consider relevant; see also Section 3.2 in fine

on companies to adopt more ambitious diversity policies, while offering a great deal of flexibility. Measures based on disclosure have proved their effectiveness in Member States such as Finland or Sweden.

This measure could also have potential positive social impacts, as a more diversified board would be better placed to take into account concerns of different groups of employees and stakeholders. In addition, it may bring more equality of treatment and opportunities for different groups of people or individuals and this from the top to the bottom.

This approach, unlike in the case of financial institutions, has been considered, at this stage, more appropriate to achieve the pursued objective of diversity in the boardroom. Differences between financial institutions and listed companies in general (e.g. banks generate systemic risks, consequences were borne by governments and population at large, etc.), require stricter rules on the corporate governance of financial institutions, whereas listed companies need more flexibility. The enhanced disclosure requirement would be coherent with other initiatives (e.g. in financial institutions, on gender diversity) and it would be in particular likely to contribute to the implementation of the quantitive targets by companies.

Option 2 (diversity as recruitment criterion) could have a positive impact on diversity, while being consistent with the initiative on gender balance in the boardroom. Similarly, it could also have a positive social impact as described above. However, companies are not always transparent about their recruitment practices and processes. In the absence of a sufficient degree of transparency, the effectiveness of an option addressing recruitment alone would be limited as it would rely mainly on the appreciation by the company.

Option 3 (establish a diversity policy), although also effective, could be perceived as too prescriptive as it would simply oblige companies to put in place a policy, without giving them the choice to justify the absence of such policy on a "comply or explain" basis. It may thus be less accepted by stakeholders and may be less consistent with the on-going initiative on gender diversity that may require quantitative targets. It would have positive social impacts in terms of equality and opportunities for different categories of people (gender, age, etc.). It could indirectly have an impact on the reconciliation between private/family and professional life, as the promotion of more women in key positions for example (who have in general more family related responsibilities) would potentially bring about more flexible policies in this regard.

In the light of the assessment of the abovementioned policy options, it appears that the most appropriate option at this stage would be **option 1 (disclosure of diversity policy).** It is also better accepted by most stakeholders compared with a compulsory diversity policy or to an action focusing only on recruitment policy. Moreover, it is complementary to the separate Commission initiative relating to the possible introduction of quantitative targets for gender balance on boards, as the enhanced disclosure would probably contribute to a better implementation of these quantitative objectives. A detailed comparison of options is to be found in Annex 7.

Table 4 – Assessment of the Policy Options

	Effectivenes	Efficiency (Compliance Cost)	Competitiveness	Coherence with EU initiatives	Estimated costs per company
0. No policy change	0	0	0	0	0

1. Disclosure of internal policy on diversity in the annual report	+	+	+	++	€600/1000
2 Diversity must be one of the criteria of Board composition	+/?	-/?	+/?	+/?	? possible costs linked to remuneration of HR specialists
3. Requirement to establish a policy with regard to diversity	+	-	-	-/?	? linked to remuneration of HR specialists and possible increase of board members
Magnitude of impact as compared with the baseline scenario (the baseline is indicated as 0): ++ strongly positive; + positive; – – strongly negative; – negative; ≈ marginal/neutral; ? uncertain; n.a. not applicable					

Table 5 – Assessment of the Policy Options by Stakeholders Group			
	Companies	Investors	Other (NGOs, civil society, etc.)
0. No change	0	0	0
1. Disclosure of internal policy on diversity in the annual report	+	++	++
2 Diversity must be one of the criteria of Board composition	+/?	+/?	+
3. Requirement to establish a policy with regard to diversity	-	+/?	+

5.2.3 *Preferred option (enhanced disclosure of the board diversity policy)*

The present section refines the preferred option which aims at enhancing board diversity, by taking into account the disclosure criteria mentioned at the beginning of the present chapter: the form and content of the disclosure and the nature of the requirement.

As regards the form of the disclosure, it appears that a statement in the annual report describing the company's diversity policy for the board is the most appropriate approach. In this regard it is important to recall that, as already mentioned in section 2.2., according to the current provisions of the Fourth Directive, *all listed* companies are required to provide a corporate governance statement, which shall include, *inter alia*, information on the composition and operation of the administrative, management and supervisory bodies and their committees. Thus, information on board diversity policy should be a part of the corporate governance statement, which appears to be a sufficient instrument for ensuring transparency. A separate report does not seem necessary, especially given that, the disclosure of board diversity policy covers only a limited group of people (European boards consist on average of 12 members[118]). The proposed provisions regarding board diversity would

[118] Heidrick & Struggles, 2011, p. 37

therefore complement the current provisions laid down in Article 46a of the Fourth Accounting Directive, by adding a new requirement for diversity disclosure

As regards the topics and the content of the disclosure, companies should be required to describe their diversity policy with regard to various aspects, including age, gender, nationality and educational and professional background. These aspects are particularly important, as shown in the description of this problem. However, companies would also be able to include other aspects of diversity which they consider relevant and material. In addition to the description of the diversity policy, its objectives, implementation and results should be also included. As the main objective of increasing diversity is to enhance the supervision of the management, the information specified should be provided in the first place regarding supervisory boards and the non-executive directors. However as the preferred option would not place on companies any concrete obligation going beyond disclosure and as enhanced transparency regarding both management/executive directors and supervisory/non executives would be beneficial for the company, the new requirement should therefore concern the same bodies as currently foreseen by the Accounting Directives for the information on "the composition and operation of the administrative, management and supervisory bodies".

Regarding the basis for disclosure on board diversity, although initiatives such as GRI include diversity indicators in their reporting framework, it is preferable to leave companies free to choose the most appropriate reference for the disclosure.

As regards the nature of the requirement, the preferred option aims at bringing about positive change in the boardroom by creating more visibility around the issue. Yet, it would not put a binding obligation on the company to have a diversity policy. A 'comply or explain' approach seems thus the most appropriate solution. Companies would therefore be required to report on their board diversity policy or, if they don't have one, explain why this is the case.

To conclude, the preferred option would require companies to disclose their board diversity policy, in particular as regards age, gender, nationality, professional and educational background. Companies would have to describe the objectives of this policy, its implementation and its results. The disclosure would be part of the corporate governance statement, which is contained in the annual report. Companies that do not have a diversity policy would be required to provide reasons for that.

5.3 Choice of instrument

In principle, a number of instruments could be used to approach the problem, including, self- and co-regulation, new legislation (directive or regulation) or modification of existing legislation. The following points are relevant when considering the case for amending the existing Accounting Directives (AD):

- The general scope of the AD is EU registered companies both listed and non-listed. As far as non-financial information is concerned, several arguments support having transparency requirements for both listed and non-listed companies: first, non-listed companies are subject to the same demands of transparency and accountability as listed companies; second, having the same regime on listed and non-listed companies would maintain a level playing field.

- On the other hand, specific provisions of the Accounting Directives relating to corporate governance disclosure only apply to listed companies. The disclosure of board diversity policy could be added as a new topic to the existing corporate governance statement.

- Moreover, the relevant requirements of the Accounting Directives would also be applicable to the Transparency Directive, by means of a cross-reference[119]. The scope of the TD covers *all* companies listed on EU regulated markets (including companies incorporated outside the EEA but listed on EU regulated markets). Should new articles be added to the Accounting Directives, an amendment of the Transparency Directive may therefore also be necessary.

- A proposal to revise the TD and of the AD was adopted by the Commission on 25 October 2011, and negotiations are currently on-going[120].

An alternative instrument would be a new **Regulation,** which would have the advantage of being directly applicable and would not need to be transposed into national law. However the creation of a separate Regulation to deal with this single policy objective alone does not appear proportionate, when the policy could be legislated for within separate sections of the AD. Moreover, a Regulation would not seem an appropriate instrument in light of the existing non-financial disclosure practice, which is based on principles and objectives rather than detailed standards.

It could also be argued that a specific, measurable, achievable and timely commitment by the industry itself **(i.e. Self- or co-regulation)**, appropriately supported by EU policies, could possibly deliver significant results. However, self- or co-regulation are not considered as effective options because, despite the growing demand from stakeholders (mainly users of information, such as investors and NGOs) throughout the years, still only a minority of large companies are disclosing non-financial information on a voluntary basis. Moreover, this instrument would not address the problems of lack of minimum harmonisation stemming from the diverse approaches taken by some Member States.

In the light of the above considerations the inclusion of a series of provisions within the Accounting Directives is the preferred choice.

5.4 Scope of Application

As far as non-financial information is concerned, the Commission services conclude that only large companies and groups, whether listed or not, should fall within the scope of application of the new rules. Requiring only large companies to provide disclosures would be in line with the Commission's policy of making administrative burden proportionate. Smaller business would spend proportionally more time and resources dealing with administrative tasks than their larger counterparts[121]. Having in mind the objective of avoiding undue burden and taking into account the input from stakeholders and national authorities, only companies having more than 500 employees would be subject to new requirements. It is estimated that this would cover approximately 18,000 large companies operating in the EU. This threshold is

[119] See article 4 (5) of Directive 2004/109 ("Transparency Directive"), http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:390:0038:0038:EN:PDF

[120] Proposal for a Directive on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, COM/2011/0684 final, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0684:EN:NOT

[121] CSES 2011, p. 27

higher than the one currently applied within the Accounting Directives for certain obligations (i.e.: 250 employees), which limits the burden of the proposed measure.

Companies that are subsidiaries within a group could also be exempted from the disclosure requirement to the extent that their relevant information is integrated in the consolidated report of the parent company.

As regards board diversity, it is important to maintain coherence with existing requirements in the field of corporate governance disclosure. The existing EU corporate governance rules only cover listed companies[122]. According to the current provisions of the Accounting Directives *listed* companies are required to provide a corporate governance statement in their annual report and to disclose certain topics (see Annex 2). The scope of disclosure of the *diversity* topic should therefore be the same as the scope of disclosure of other corporate governance topics. Respondents to the Green Paper on the EU corporate governance framework clearly pronounced themselves against the extension of the EU corporate governance rules to *unlisted* companies. Furthermore, whereas the need to ensure the same level of transparency on non-financial disclosure for both listed and non-listed companies was highlighted above, the situation is different for disclosure of diversity policy. Corporate governance arrangements regulate the internal functioning of a company and as a consequence disclosure is crucial in case of listed companies with external shareholders who are directly concerned by it and less important in case of non-listed companies[123]. The scope of the disclosure on board diversity and on other non-financial matters will thus not be identical. As explained in 5.3 above, such difference already exists in the current provisions of the Accounting Directives. Thus, *only listed* companies should be covered. However, best corporate governance practices of unlisted companies can be encouraged on voluntary basis.

Finally, as to the *size* of companies concerned, it should be pointed out that including board diversity policy disclosure as a new topic in the corporate governance statement should not create any considerable administrative burden. As far as SMEs are concerned, listed ones are already required to produce a corporate governance statement, including information on the composition and functioning of their boards. However, given that it may be sometimes difficult to assess or foresee precisely the impact of such disclosure on very small companies and that the reduction of the administrative and regulatory burden is a top-priority for the European Commission, SMEs as defined by the Accounting Directives would be exempted from the diversity disclosure requirement. Nonetheless, as in the case of non-listed companies, best corporate governance practices of SMEs can be encouraged on voluntary basis.

[122] It should be noted that in the proposal for a review of the Accounting Directives (art. 21) the Commission proposed that a corporate governance statement should be disclosed by public interest entities. Public interest entities are defined by Article 2 (13) of Directive 2006/43/EC, which covers certain non-listed entities too, such as certain credit institutions or insurance undertakings or other entities defined by Member States because of the nature of their business, their size or the number of their employees. A proposal to amend the Audit Directive has also been adopted in November 2011, where the Commission has proposed to further expand this definition to other types of financial sector entities. However, this possible extension of rules on corporate governance statement to the specific category of public interest entities, and in particular certain financial institutions, is justified by their potentially high impact on economy. It should not be understood as a general extension on rules on corporate governance statement to unlisted companies.

[123] EU rules on corporate governance apply only to listed companies. It is considered that companies that do not raise capital on financial markets should in general not be subject to same requirements as listed companies, as there is no need to ensure protection of external investors. Good governance practices for unlisted companies could of course be encouraged on a voluntary basis.

6 CUMULATIVE IMPACTS OF THE PREFERRED OPTIONS

The proposed policy is a combination of a mandatory requirement to disclose non-financial information (including information on the diversity policy applicable to the board) in the annual report, and voluntary detailed reporting. As explained above, it is expected that the preferred options may achieve the identified operational objectives, while keeping the administrative burden low. The expected cumulative impacts are presented below.

6.1 Expected Primary Impacts

6.1.1 Increased transparency

The preferred option is expected to increase the *quantity* of information available to stakeholders compared to the baseline scenario by increasing the number of companies disclosing information by about 7 times (from ~2500 to ~18000). Moreover, the requirement is designed in a way to meet the key needs identified by the users as regards both the content of the disclosure (i.e. material information concerning policies, performance and risk management aspects on social, environmental, human rights and anti-corruption aspects). This lead to a further improvement in the quality of the information disclosed, compared to the baseline scenario. The reference to internationally accepted frameworks is meant to raise the level of materiality, accuracy and comparability across companies as well as of one company over time. The requirement for companies to give a reasoned explanation in case they do not have a specific policy in place may also increase peer pressure and encourage best practices, while retaining flexibility[124]. Finally, should companies also decide to voluntarily provide a non-financial report, the level of detail of information disclosed would necessarily increase.

6.1.2 Better performance of companies (and better risk management)

The Commission services estimate that the proposed policy, by enhancing transparency at a limited cost, would have an overall positive impact on companies' performance. The economic benefits related to non-financial transparency tend to become more apparent on the long-term, and they appear to be larger in those countries with mandatory disclosure requirements[125]. As explained in chapter 3, academic evidence confirms a positive correlation between transparency and performance. However, such benefits are in most cases difficult to quantify and precise estimates as to what extent the preferred option would contribute to their achievement cannot be provided[126].

Overall, the preferred option is expected to bring benefits both at internal (i.e. better employee relations, improved management systems and internal processes, etc.) and external level (i.e. enhanced reputation, better perception by and dialogue with stakeholders, easier access to capital). In particular, the requirement is designed in a way that would encourage companies

[124] The Danish case shows that two years after the approval of the relevant legislation, 97% of companies have chosen to report on their CSR policies. http://www.dcca.dk/graphics/publikationer/CSR/CSR_and_Reporting_in_Denmark.pdf . For an overview of the different arguments in favour or against the comply or explain approach, see "Development of Norms Through Compliance Disclosure", Bjorn Fasterling, 2012

[125] Ioannou and Serafeim, 2011

[126] In the CSES study, for instance, only 3 respondents to the survey indicated they had tried to quantify the benefits of non-financial reporting in figures. Of those 3, only one had arrived at a financial estimate. This company had a non-financial reporting cost in the mid-range of larger companies (€300000) and reported they had identified efficiency savings of €80 million. However, it was not clear that what amount of these benefits could be attributed to the preparation of non-financial reports.

to better integrate non-financial and financial considerations, as the disclosure would be part of the annual report. Material information on risk-management aspects would consequently be reviewed by the boards, allowing them to have a more thorough and integrated view of both financial and non-financial risks. This may have positive effects on overall management, through a better consideration of non-financial parameters in designing business strategies[127].

The proposed requirement may also lead companies to set up (for first time reporters) or optimise processes and systems related to the collection and analysis of information. This may increase management's awareness of non-financial performance[128], and generate tangible cost-saving data leading, for instance, to energy saving interventions or waste minimisation.[129]. Other positive impact may include the reduction of some running costs (such as the reduction of insurance costs due to better management of risks) or easier benchmarking with competitors or market leaders.

Furthermore, the requirement to disclose the diversity policy applicable to their boards, by enhancing the visibility of companies' actions in that field, would encourage companies to take further into account the need to have more diverse views in the boardroom. A right mix of background, origins and views allows for more robust discussion and leads to better oversight of the management by the board and to overall better decision-making processes.

6.1.3 Increased accountability

As a result of the implementation of the preferred option, material non-financial information would be made publicly available on a regular basis. This information could be used by civil society organisations and local communities to assess the impact and risks related to the operations of a company. It is therefore anticipated that, by increasing the quantity of and quality of information available, a disclosure requirement would also positively affect the way companies are perceived in terms of their accountability towards society. More and better reporting could increase consumers' trust and have a positive effect on the demand side, creating new entrepreneurial opportunities and better management of externalities. It would also act as a catalyst for companies to increase or improve their CSR practices, as well as improve their diversity in the boardroom.

6.1.4 Enhanced efficiency of capital markets

As ESG data provides an important qualitative window into the management practices of companies, the proposed policy would contribute to improve investors' decision-making capacity[130]. Financial markets increasingly recognise that risks related with investing in these

[127] "What Really Counts: The materiality of extra-financial factors" Garz, and Volk, 2007, http://www.sristudies.org/Garz+and+Volk+(2007), studied sustainability reporting by 540 EU companies and found that the process of drafting such a report was among the most important catalysts for organizational change, contributing to the accumulation of knowledge, questioning of processes, and the establishment of suitable structures and practices.

[128] According to the CSES study, benefits relating to credibility and overall transparency are ranked amongst the most important ones by the companies surveyed. Risk-management and improvement of the internal culture were also considered important or very important by all companies surveyed. CSES 2011, p. 28

[129] Reporting might provide companies with tangible cost-saving data, e.g. on recycling, energy saving interventions or waste minimisation. In KPMG’s 2008 survey, cost saving was the fourth biggest sustainability motivator, with 27% of respondents admitting to implement reporting processes for cost reduction purposes. As an example, paper manufacturer Mondi publically states that it achieves significant bottom-line savings by reporting on its environmental impact. See http://www.mondigroup.com/desktopdefault.aspx/tabid-2032/

[130] Increased transparency may also reinforce the credibility of specific sustainability indexes and rating systems. The risk that their recent proliferation could undermine their own quality and credibility, as they

companies are lower than in other companies and rewards them accordingly. A vast majority of academic studies agree that companies with high ratings for CSR and ESG factors have a lower cost of capital in terms of debt (loans and bonds) and equity[131]. In the public consultation investors confirmed the relevance of ESG data stating that the insufficient level of transparency constitutes a constraint to their capacity to build relevant non-financial information into their valuation models[132]. In the short term, introducing more and better disclosure would respond to growing market-driven demand for more comparable and accurate non-financial information. In the long term it could also drive more mainstream investors to take into better account all the risks and externalities of firms and thus its true performance, leading to the development of more comprehensive valuation models.[133] In particular, by providing additional guidance as regards the minimum requirements on topics and content covered by the disclosure, this policy would contribute to mainstreaming the information available and could provide clearer expectations concerning its materiality and completeness. It follows that the proposed policy could have a limited positive impact on problems related to financial markets' short-termism which appeared evident in the aftermath of the financial crisis. In relation to diversity in the boardroom, as already illustrated in section 3.2, having the right mix of skills and knowledge is essential for good corporate governance. Therefore, the proposed policy would enable investors to take informed decisions as to the governance practices of the company.

On the basis of this reasoning, and of growing evidence of a link between financial and non-financial long term performances, the Commission services estimate that the proposed policy could contribute to a more efficient allocation of capital across the Internal Market.

6.1.5 Increased administrative burden

The preferred policy options will determine a limited increase in administrative burden on the concerned companies as it will add to the length of the annual reports, as the quantity of information disclosed is expected to be broader than the current practice.[134]

As regards non-financial disclosure, the additional cost is estimated to be between €600 and €4,300 per year per company (for a detailed explanation see Annex 8), thus generating a total cost estimated between **€10,5 and 75,25** million. Additional costs relate in particular to drafting, publication, or specific staff training. Some additional data may also need to be collected, although one should bear in mind that the policy would merely strengthen an already existing legislative requirement, and the necessary systems and procedures should already be in place in many companies. The proposed policy would not determine additional

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could rely on incomplete and unsubstantiated information, was raised by some stakeholders. See "Rate the raters", AccountAbility, 2011, http://www.sustainability.com/library/rate-the-raters-phase-four#.TyGX8qVbdiM

131 DB Group, 2012

132 Public Consultation Summary Report, p. 10. See also the Minutes of the ad-hoc Expert Group, 11 July 2011 meeting, http://ec.europa.eu/internal_market/accounting/docs/11072011_minutes_en.pdf. For an overview of investors' needs, see CREM/Adelphi, 2011, p. 91

133 "Reporting Change: Readers & Reporters Survey 2010", SustainAbility, 2010, http://www.sustainability.com/library/reporting-change#.TyGj3aVbdiM. The study shows that reporting is considered a trusted form of information channel by a large majority of users (90%).

134 The scope of companies' recurring costs closely depends on the content of the requirement. Therefore, and due to the qualitative and flexible nature of the proposed measures, all the figures provided should be considered as estimates and a fair amount of uncertainty needs to be included. The cost estimates are based on the available public data, as well as on evidence gathered by the Commission services in the various consultations (online public consultation, ad hoc expert group, bilateral contacts with stakeholders). See Annex 8 for more details.

administrative burden on those companies voluntarily choosing to produce a detailed report in compliance with the requirement, as they would be exempted from additional disclosure obligations. The cost incurred by these companies on a voluntary basis, however, would be significantly higher, although it varies to a great extent depending on the size and complexity of the company and its operations, as well as on the type of reporting chosen. They would also be likely to be higher for first time reporters, while decreasing over the years. As estimated in Annex 8, the total cost of producing a non-financial report is estimated in the range of €33,000 to €604,000. Such estimates include all costs relating to the drafting of the report, its publication, additional ad-hoc data collection costs, annual costs such as training as well as potential external assurance.

With regard to board diversity, the cost of disclosure of the diversity policy is estimated to be between €600 and €1000 per year per company, thus generating an estimated total cost between € **3.6 and 6** million. Given the fact that the preferred option would not apply to listed SMEs, its impact should be limited. As illustrated in section 5.4 listed companies are already required to produce a corporate governance statement and the new requirement would only add a new topic to this disclosure. As the preferred option only requires disclosure and does not impose any obligation to have a board diversity policy, it offers companies an important flexibility and does not impose disproportionate burden. The administrative burden is examined in more detail in Annex 9.

6.2 Other impacts

6.2.1 Social Impacts

The preferred options would introduce in the Accounting Directives the requirement to disclose material, timely and clear information relating to social, human rights and anti-corruption aspects as well as boards' diversity. This would also strengthen the existing requirement on disclosure of employees-related matters. The proposal does not affect the applicable law concerning issues such as the director's duties, the liability of parent companies, or access to remedies. However, as stated in the CSR Communication, improved transparency would not only meet increased demand for such information but would also create 'shared value' that benefits both business and society at large. The effects of the preferred option could have been stronger if companies had to disclose a full and detailed report. Nevertheless, compared to the baseline scenario, the proposed policy would require a significant number of large firms to develop, often for the first time, policies and strategies to manage or mitigate negative social impacts. At the same time, firms would be encouraged to better identify potential risks relating to human rights[135], board diversity or anti-corruption. As showed by a series of recent studies[136], better assessing and improving their social performance companies are expected to better identify entrepreneurial opportunities and improve their overall performance. In particular, increased transparency on employees- and human capital matters could contribute to support better employment relations and contribute to reducing risks and costs associated with labour conflicts. Furthermore, a diverse board reflects and represents better the society at large. In particular, a board with a better balance in terms of gender, age, nationality and background could take better account of concerns of different groups of employees and other stakeholders. A stronger transparency of diversity at the highest decision-making level of the company could also be a vehicle to promote openness to diversity at all organisational levels. Lastly, it can be expected that the proposal

[135] Particularly in the case of those companies operating in third countries where legal requirements regulating social impacts are weak or weakly enforced. See University of Edinburgh, 2010

[136] DB Group, 2012, p. 58.

could contribute in a limited extent to the creation of jobs in the field of CSR and in the SRI sector, as increased availability of non-financial information may lead to increased activity. The negative impacts on employment, which could result from the higher costs of reporting, should be negligible due to the limited administrative burden of the proposal. Bilateral contacts with stakeholders and responses to the public consultation did not identify any concrete risks that EU companies would seek to move their operations or headquarters outside the EU as a reaction to new regulation in this field.

6.2.2 Environmental Impacts

Although the existing Accounting Directive already requires companies to report environmental information, the new provision would improve current practices both in quantitative and in qualitative terms. The direct impact of the proposal cannot be estimated with precision, however the result of the public consultations as well as consolidated research suggest that more transparency and better quality of information on companies' environmental performance could increase the level of environmental awareness and, as a consequence, contribute to better environmental performance. The requirement to disclose material issues related to environmental policies and risk-management aspects would also introduce a forward looking element in the non-financial statements and is likely to trigger further assessment within boards and senior management as regards the related financial implications.

6.2.3 Impact on Fundamental Rights

It is estimated that the preferred options would have a beneficial impact on fundamental rights as they would encourage EU companies to regularly review their policies and internal procedures in various aspects, mainly due to a larger public scrutiny. In particular, the non-financial disclosure requirement is expected to have a positive impact on the *workers' right to information* (Article 27 of the Charter of Fundamental Rights of the EU[137]), and contribute to a high level of environmental protection in the Union policies (Article 37). Furthermore, by specifically requiring companies to disclose material risks in the field of human rights, the proposal is likely to have a positive effect on human rights awareness within companies and contribute to the implementation of the corporate responsibility to respect human rights. It is therefore likely to reduce instances of EU company involvement in human rights infringements. The required disclosure of the diversity policy is likely to promote the right to *non-discrimination* (Article 21 of the EU Charter) and *equality between women and men* (Article 23). It could also have a positive impact on the *freedom to choose an occupation and right to engage in work* (Article 15). It can be expected as well that in the long term more transparent disclosure practices would have a positive effect *on the freedom of expression and information* (Article 11). The preferred policy options would not as such require the publication and other processing of personal data and thus would not impact on rights to *privacy* and *data protection* (Articles 7 and 8 of the EU Charter). In any case companies need to ensure that any processing is carried out in accordance with national data protection laws implementing EU data protection legislation[138]. More details are provided in Annexes 6 and 7.

[137] http://www.europarl.europa.eu/charter/pdf/text_en.pdf

[138] Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:en:HTML

6.2.4 Other Economic Impacts

As a result of the anticipated primary impacts, the Commission services estimate that such initiative may limitedly contribute to meeting the objectives of the Europe 2020 strategy for smart, sustainable and inclusive growth.[139] It is therefore estimated that the impact on overall long-term competitiveness of companies would be positive. The measure will not have meaningful budgetary consequences for public authorities, nor have implications for the EU budget.

6.2.5 Third countries and international aspects

As highlighted in section 2.3, a global trend towards increased government intervention in this area in the last few years can be identified[140]. Important developments can also be observed in emerging markets, where stock exchanges have taken initiatives requiring more transparency[141]. Stakeholders-led initiatives advocating the launch of a global convention for sustainability reporting have also been identified in the framework of the RIO+20 conference[142], where the importance of sustainability reporting for large and listed companies has been acknowledged in the final declaration.[143]

The proposed policy would nevertheless put the EU in a leading position at global level, and given the general direction of public policy in this field in different countries and regions, this would be to the advantage of EU companies. The proposed combination of mandatory and voluntary requirements would be consistent with other third-countries initiatives, and potentially trigger their further development. None of the stakeholders consulted signalled any potential conflict between the law applicable in third countries, and the proposed policy. The proposed policy could also positively support the further development of the existing international initiatives, frameworks and guidelines, thus contributing to achieving the objective of better aligning European and global approaches to CSR identified in the CSR Communication.

No significant effects on trade flows with third countries were identified nor signalled in any of the consultations carried out. As far as investments are concerned, a limited positive impact could be anticipated, as both responsible investors and mainstream investors based in third countries may be attracted by the expected gains in terms of transparency and sustainability of EU companies.

7 MONITORING AND EVALUATION

In light of the policy objectives set out in Section 4, the following arrangements are proposed in order to set up an appropriate monitoring and evaluation framework.

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[139] http://ec.europa.eu/europe2020/targets/eu-targets/index_en.htm

[140] According to UNEP/KPMG/GRI, a total of 142 country standards and/or laws with some form of sustainability-related reporting requirement or guidance currently exist, and approximately two thirds (65%) of these standards can be classified as mandatory and one third (35%) as voluntary.

[141] Such as the Shenzen and Shanghai Stock Exchanges (China), the Bovespa Stock Exchange (Brazil) and the Johannesburg Stock Exchange (South Africa).

[142] A Convention for Corporate Sustainability and Accountability was advocated by Stakeholder Forum, the GRI and Aviva Investors, http://www.csradialogue2012.org/index.php?option=com_content&view=article&id=120&Itemid=120

[143] Rio+20, UN Conference on sustainable development, paragraph 47 of the Final Declaration

7.1 Monitoring

The Commission will monitor the implementation of the revised Directives in cooperation with the Member States throughout the implementation period which is expected to last possibly until the end of 2014. In compliance with the principle of subsidiarity, the relevant information should be gathered primarily by Member States through relevant agencies or Securities Markets' Regulators. The Accounting Regulatory Committee (ARC) could also serve as forum for information sharing. It is expected that the costs of such activity would be met from existing operational budgets, and would not be significant. Monitoring activity should involve sample reviews of non-financial statements or reports, to ensure compliance with the requirement of the revised Accounting Directives and a comparison between preparers with similar operations to ensure they are reporting in a consistent manner. During this time, implementation workshops can be organised by the Commission and/or ESMA to deal with questions/issues that might arise in the course of the implementation period. Where questions are common and specific to one industry sector, guidance on how to deal with the issue may be issued by the Commission/ESMA.

7.2 Evaluation

The evaluation of effects of the preferred policy shall be carried out to see to what extent the anticipated impacts materialise. Improved disclosures by companies, in terms of quantity (i.e. increased number of statements or reports) and quality of the information disclosed, would be indicators of better transparency. Similarly, the number of EU companies making reference to international frameworks should be monitored to assess progress. On diversity, the increase of the number of board members with different professional and educational background, age, gender, nationality would be assessed, in accordance of course with the established diversity policy reflecting the needs and particularities of the company. In terms of possible downsides it will be necessary to assess whether any non-EU registered companies have chosen to de-list from EU regulated stock exchanges as a consequence of the policy. Such an evaluation will be carried out by the Commission services and/or ESMA in cooperation with the Member States, on the basis of all the relevant information collected in the framework of the monitoring activities described above. Consultations with European companies, investors and other stakeholders could be carried out via other platforms, including through the existing multi-stakeholders' forum on CSR.

All the above listed options could allow data collection at limited cost at EU level, as they would make broad use of existing structures and would not require the setting up of new instruments. The possibility of contracting an external study on the implementation and effects of the non-financial reporting obligation will be considered. Such a study could be carried out upon the expiration of the implementation deadline and its results would be made public. On the basis of the data collected, and three years after the expiration of the implementation deadline, the Commission would consider the need to produce an ex-post evaluation report. The results and feedback from monitoring and evaluation will also be considered with a view to propose further amendments where appropriate.

Annex I

Summary of Public Consultations

1. Disclosure of Non-Financial Information by Companies

Stakeholders have been consulted on various ways in order to obtain their views on how to improve non-financial disclosure requirements and practices. A public consultation on disclosure of non-financial information by companies was conducted between November 2010 and January 2011. A full summary of the results and the 260 responses received are available at: http://ec.europa.eu/internal_market/consultations/2010/non-financial_reporting_en.htm.

On the existing regime of non-financial information disclosure, the majority of respondents affirmed that legal regimes differ significantly across the EU Member States. Several respondents also considered that this fragmentation leads to difficulties in benchmarking between companies. Half of the respondents described the current regime applicable in their respective jurisdiction as poor or very poor. According to several respondents, poor transparency translates into a lack of balance and cohesion of reporting by companies. In particular, it emerged that insufficient disclosure of non-financial information makes it difficult for shareholders and investors to make a reasonable assessment of the extent to which companies take account of CSR in their activities. In general, stakeholders were not able to quantify costs and benefits and it appeared clear that there is no broadly recognised methodology in place for the assessment of costs arising from reporting activities. However, a distinction between start-up costs in upgrading capabilities and the less considerable longer term costs once the practice emerged. With respect to improving the current regime, a majority of respondents suggested the EU should draw on existing international frameworks rather than elaborate new standards and principles. According to some, a 'comply-or-explain' approach would guarantee a certain room for flexibility. While a large majority of contributors showed support for the concept of integrated reporting, for many stakeholders, developments on this area need further reflections, especially on how avoiding excessive increase of companies' administrative burden. As regards future regulatory initiatives, a majority of respondents found relevant to disclose better information on: whether or not the company has a policies; business risks and opportunities arising from social and environmental issues; as well as key information on other specific issues. Respondents generally considered that there could be value in principles-based reporting drawing on i.e. GRI, UN Global Compact, the OECD Guidelines, ISO 26000 etc. A vast majority of users considered that human rights and corruption issues should be included in non-financial reporting practices by companies. On the issue of which companies should be covered by mandatory requirements, the majority argued in favour of excluding small businesses. Finally the fact whether a company is listed on financial markets was not considered being of great relevance.

Consultations with stakeholders also took place through a number of other instruments and fora, including the Member States High-Level Group on CSR, the Multi-stakeholders forum coordination committee, or the Accounting Regulatory Committee. The Commission services have also contributed to the work of the Laboratory on Valuing Non-Financial Performance, part of the European Alliance on Corporate Social Responsibility (CSR). Moreover, during 2010 and 2011 the Commission services had a series of bilateral meetings with stakeholders.

Overall, the result of the consultations shows a diverse pattern of opinions depending on the category of respondents (i.e. preparers of non-financial information - companies, users - mainly investors, NGOs, auditors and accountants, public authorities, academics).

Users of non-financial information, in particular investors and NGOs, underlined their support for an EU initiative in this field, arguing that the market is failing to provide with sufficient information concerning the environmental, social and human rights performances of companies. They suggested that the costs of reporting would be outweighed by the benefits to civil society, investors, in terms of increased transparency and possibility to take better account of companies' performance in the long term when taking investment decision. Several NGOs argued that, in order to give a thorough picture of a company policy in the environmental, social and human rights domains, disclosure obligations should also be extended to information related to the supply-chain. On the other hand, a majority of the preparers consulted (including in particular large companies and business associations) expressed their concerns that stricter mandatory disclosure requirements could be excessively burdensome, in particular for Small and Medium sized companies (SMEs) and undermine the efforts that the industry is already taking on a voluntary basis and negatively affect competitiveness. It should be noted though that a minority of companies, including in particular those that already disclose non-financial information, underlined the benefits brought by non-financial reporting in terms of better integration of non-financial performance into their business operations and strategy. Others called on the EU to provide for a level-playing field in this area, in order to pre-empt different legal requirement in different Member States.

2. Boards Diversity

A general consultation on the EU corporate governance framework, including inter alia diversity in the board, was held by the European Commission between April and August 2011[144]. The summary of the consultation results[145] is attached to this Impact Assessment (see Annex 1), while the 409 responses received are available at: http://ec.europa.eu/internal_market/consultations/2011/corporate-governance-framework/index_en.htm

The questions on diversity, raised in the consultation, inquired, among other issues, about potential requirements for more specific recruitment policy, obligatory disclosure of the diversity policy and about other binding diversity actions. Whereas the majority of respondents rejected the idea of more binding diversity actions and were almost equally divided as to the support for more specific recruitment policies, there was a clear support for the disclosure of a diversity policy. The support has been expressed in particular by civil society, directors' associations, employees, investors, public authorities, whereas business federations were against and companies slightly against. Those in favour of obligatory disclosure underlined that enhanced transparency would enable investors to make more informed decisions and would help reducing group think. The respondents that were against argued that it should be up to the companies to decide on the recruitment profiles and on the diversity policy.

144 Green Paper on the EU Corporate Governance Framework, http://ec.europa.eu/internal_market/company/modern/corporate-governance-framework_en.htm

145 See http://ec.europa.eu/internal_market/company/docs/modern/20111115-feedback-statement_en.pdf

Annex II

Relevant Provisions of the Accounting Directives

Directive 78/660/EEC on the annual accounts of certain types of companies (Fourth Accounting Directive)

Article 46

1.(b) To the extent necessary for an understanding of the company's development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters;

Article 46a

1. A company whose securities are admitted to trading on a regulated market within the meaning of Article 4(1), point (14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments shall include a corporate governance statement in its annual report. That statement shall be included as a specific section of the annual report and shall contain at least the following information:

(a) a reference to:

(i) the corporate governance code to which the company is subject, and/or

(ii) the corporate governance code which the company may have voluntarily decided to apply, and/or

(iii) all relevant information about the corporate governance practices applied beyond the requirements under national law.

Where points (i) and (ii) apply, the company shall also indicate where the relevant texts are publicly available; where point (iii) applies, the company shall make its corporate governance practices publicly available;

(b) to the extent to which a company, in accordance with national law, departs from a corporate governance code referred to under points (a)(i) or (ii), an explanation by the company as to which parts of the corporate governance code it departs from and the reasons for doing so. Where the company has decided not to apply any provisions of a corporate governance code referred to under points (a)(i) or (ii), it shall explain its reasons for doing so;

(c) a description of the main features of the company's internal control and risk management systems in relation to the financial reporting process;

(d) the information required by Article 10(1), points (c), (d), (f), (h) and (i) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, where the company is subject to that Directive;

(e) unless the information is already fully provided for in national laws or regulations, the operation of the shareholder meeting and its key powers, and a description of shareholders' rights and how they can be exercised;

(f) the composition and operation of the administrative, management and supervisory bodies and their committees.

2. Member States may permit the information required by this Article to be set out in a separate report published together with the annual report in the manner set out in Article 47 or

by means of a reference in the annual report where such document is publicly available on the company's website. In the event of a separate report, the corporate governance statement may contain a reference to the annual report where the information required in paragraph 1, point (d) is made available. Article 51(1), second subparagraph shall apply to the provisions of paragraph 1, points (c) and (d) of this Article. For the remaining information, the statutory auditor shall check that the corporate governance statement has been produced.

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

Directive 2009/101/EC on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (Before 21 October 2009: First Council Directive 68/151/EEC)

Article 2

Member States shall take the measures required to ensure compulsory disclosure by companies as referred to in Article 1 of at least the following documents and particulars:

(a) the instrument of constitution, and the statutes if they are contained in a separate instrument;

(b) any amendments to the instruments mentioned in point (a), including any extension of the duration of the company;

(c) after every amendment of the instrument of constitution or of the statutes, the complete text of the instrument or statutes as amended to date;

(d) the appointment, termination of office and particulars of the persons who either as a body constituted pursuant to law or as members of any such body:

(i) are authorised to represent the company in dealings with third parties and in legal proceedings; it must be apparent from the disclosure whether the persons authorised to represent the company may do so alone or must act jointly; (ii) take part in the administration, supervision or control of the company;

Directive 83/349/EEC on consolidated accounts (Seventh Directive)

Article 36

1. The consolidated annual report shall include at least a fair review of the development and performance of the business and of the position of the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face.

The review shall be a balanced and comprehensive analysis of the development and performance of the business and of the position of the undertakings included in the consolidation taken as a whole, consistent with the size and complexity of the business. To the extent necessary for an understanding of such development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance

indicators relevant to the particular business, including information relating to environmental and employee matters.
In providing its analysis, the consolidated annual report shall, where appropriate, provide references to and additional explanations of amounts reported in the consolidated accounts.

2. In respect of those undertakings, the report shall also give an indication of:

(a) any important events that have occurred since the end of the financial year;

(b) the likely future development of those undertakings taken as a whole;

(c) the activities of those undertakings taken as whole in the field of research and development;

(d) the number and nominal value or, in the absence of a nominal value, the accounting par value of all of the parent undertaking's shares held by that undertaking itself, by subsidiary undertakings of that undertaking or by a person acting in his own name but on behalf of those undertakings. A Member State may require or permit the disclosure of these particulars in the notes on the accounts;

(e) in relation to the use by the undertakings of financial instruments and, where material for the assessment of assets, liabilities, financial position and profit or loss, — the financial risk management objectives and policies of the undertakings, including their policies for hedging each major type of forecasted transaction for which hedge accounting is used, and — the exposure to price risk, credit risk, liquidity risk and cash flow risk;

(f) a description of the main features of the group's internal control and risk management systems in relation to the process for preparing consolidated accounts, where an undertaking has its securities admitted to trading on a regulated market within the meaning of Article 4(1), point (14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (1). In the event that the consolidated annual report and the annual report are presented as a single report, this information must be included in the section of the report containing the corporate governance statement as provided for by Article 46a of Directive 78/660/EEC.

If a Member State permits the information required by paragraph 1 of Article 46a of Directive 78/660/EEC to be set out in a separate report published together with the annual report in the manner prescribed by Article 47 of that Directive, the information provided under the first subparagraph shall also form part of that separate report. Article 37(1), second subparagraph of this Directive shall apply.

3. Where a consolidated annual report is required in addition to an annual report, the two reports may be presented as a single report. In preparing such a single report, it may be appropriate to give greater emphasis to those matters which are significant to the undertakings included in the consolidation taken as a whole.

Annex III

Recent developments in some EU Member States

1. Denmark

- On December 2008, the Danish Parliament adopted the new article 99A, amending the Danish Financial Statements Act (Accounting for CSR in large businesses). The new legal requirement became effective since the financial year starting 1 January 2009[146]. According to the Act, approx. 1,100 large businesses in Denmark must include reports on the following three dimensions in their annual report: 1) Corporate Social Responsibility (CSR) policies, 2) how these policies are translated into actions, and 3) what the business has achieved as a result of working with CSR and expectations for the future (if any). If the business has not formulated any social responsibility policies, this must be reported.

- The Act covers large businesses in accounting class C, and listed companies and state-owned companies in accounting class D. Large businesses in accounting class C are businesses that exceed at least two of the following three size limits: total assets/liabilities of DKK 143 million; net revenue of DKK 286 million; an average of 250 full-time employees. Subsidiaries are exempt from having to report on social responsibility if the parent company does so for the entire group.

- The report on social responsibility must be included in the management review section of the annual report. Alternatively, businesses may include the report on social responsibility in a supplement to the annual report, or on the business's website. However, the management review must indicate where the report has been published. If a business has acceded to the UN Global Compact or Principles for Responsible Investment (PRI), it is sufficient to refer to the progress report that members are required to prepare. Businesses which prepare a sustainability report or similar report on their social responsibility initiatives may refer to this in their management review – however, this report must fulfill the reporting requirements (see above).

- The same reporting requirement has also been introduced for institutional investors, mutual funds and other listed financial businesses (financial institutions and insurance companies, etc.), not covered by the Danish Financial Statements Act. For these businesses, the requirement has been introduced in Executive Orders issued by the Danish Financial Supervisory Authority.

- As regards boards' diversity, the Danish corporate governance code recommends companies to strive for gender equality in their boardrooms, without setting specific targets. When assessing its composition and nominating new candidates, the nominating committee must take into consideration the need for integration of new talent and the need for diversity in relation to international experience, gender, age and other criteria.

2. Finland

- As regards boards' diversity, the 2008 Corporate Governance Code recommends, on a 'comply or explain' basis, that every board has at least one member of either sex. A

[146] http://www.csrgov.dk/sw51190.asp

company may depart from this recommendation, but in that case, it must disclose such a departure and provide an explanation for doing so.

3. France

- Law No. 2001-420 related to New Economic Regulations (NRE) is in force since 2003. Art. 116: makes environmental and social reporting is mandatory for listed companies. The requirements are based on a list of forty indicators, many of them inspired by the GRI performance indicators. Some indicators were also taken from the "French social report", a list of social data required from all companies to show compliance with labour regulation. The indicators include those related to human resources, community issues and engagement, labour standards and key health and safety and environmental issues. The law expects companies to report on all their operations, in France as well as internationally.

- The NER has recently been amended by article 225 of the Grenelle II[147], through which the obligation to present a social and environmental report will be extended, as of 2014, to non-listed companies having more than 500 employees and exceeding a balance sheet threshold of 100 million euros[148] (gradually phasing in companies having 5000 employees or less as of fiscal year 2012). All listed companies are also covered as of fiscal year 2012, and will have to comply with a list of supplementary indicators. Furthermore, extra-financial information will have to be subjected to third-party verification[149].

- As regards boards' diversity, France has introduced binding gender quotas by the Law of 27 January 2011. The law requires companies to ensure that members of each sex occupy at least 20 % of boardroom seats within three years (i.e. by 2014) and 40% within six years from the entry into force of the law (i.e. by 2017). It is applicable to companies listed on the stock exchange and non-listed companies with at least 500 workers and with revenues of over EUR 50 million over the previous three consecutive years. Non-compliant companies face nullification of their board elections, but the decisions adopted by the board remain valid. The law envisages also the suspension of benefits of directors of infringing companies.

4. Netherlands

- Since 2009, the revised Dutch Corporate Governance Code (the Frijns Code) acknowledges that CSR belongs to the core corporate strategy of companies. The code stipulates that the management board is expected to formulate a CSR policy and to submit it to the supervisory board for approval. The code also explicitly records that the supervisory board's responsibilities include the supervision and approval of the

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147 Loi n° 2010-788 du 12 juillet 2010 Portant Engagement National pour l'Environnement, art 225 http://www.legifrance.gouv.fr/

148 The enforcement degree N. 2012-557 indicates that the new requirement will be gradually enforced. Starting from the fiscal year 2012, all listed companies and all the companies exceeding a balance sheet threshold of 1 billion euros and having more than 5000 employees have to comply with the new regulation. The obligation applies from the fiscal year 2013 for companies exceeding a balance sheet of 400 million euros and 2000 employees. Finally, from the fiscal year 2014 the requirement will be extended to all companies exceeding a balance sheet threshold of 100 million euros and having more than 500 employees.

149 According to the enforcement degree N. 2012-557, from the fiscal year 2012 extra-financial information disclosed by listed companies will be subjected to third-party verification. Starting from the year 2017 the requirement will be extended to all companies exceeding a balance sheet threshold of 100 million euros and having more than 500 employees.

management board's CSR policy. The main elements of the company's CSR strategy are to be included in its annual report. The Frijns Code applies to listed companies.

- The Dutch Civil Code (1838 Section 2, Part 9 for annual reports. Article 2:391 subsection 1) implemented Directive 2003/51/EC into Dutch law. It requires that organisations should give some information (financial and non-financial) about the environment, employees and risks in their annual reports, to the extent necessary for an understanding of the company's development, performance or position as far as relevant. This requirement is compulsory for all listed companies no matter what their size and all large non-listed companies.

- Moreover, since 2004, the Ministry of Economic Affairs, Agriculture and Innovation has initiated and constructed a process called "Transparency Benchmark"[150], which is aimed at stimulating transparency of Netherlands' largest companies and organisations in terms of Corporate Social Responsibility (CSR) by producing quality reports without requiring regulation. This process was established through collaboration with the business organisations to establish a ranking system. The criteria are steadily increasing, with recent focus on supply chain responsibility, diversity and integrated reporting. The Transparency Benchmark is based on 50 criteria, including content oriented[151] as well as quality-oriented criteria[152]. The criteria are based on ISO 26 000, GRI and the new RJ 400 guideline from the Council for Annual Reporting. Participants for the self-assessment are also asked additional voluntary questions about diversity and integrated reporting. The 2010 version is the seventh edition of this report and it marks a broadening of the review. Almost 500 companies and organisations have been included, compared to 183 in 2009. Furthermore, the criteria have also been broadened.

- As regards boards' diversity, by the Law of 6 June 2011 the Netherlands introduced gender quotas combined with a 'comply or explain' mechanism. Both public and private limited companies are obliged to establish a share of at least 30% of members of each sex on the company's executive board of directors and in the supervisory board. The quotas apply to companies with assets worth more than € 17 500 000, an annual turnover of more than € 35 000 000 and more than 250 employees. Company below these thresholds should take into account, as far as possible, a balanced representation of both sexes in its procedures to select new members of the board of executive directors or the board of supervisors, and in the drafting of the specification of any vacancy.

- Companies which do not reach the quota must provide an explanation in the annual report, and propose new measures, which will be applied by the company in order to reach the quota. There are no sanctions for not meeting the quotas. The measure has a temporary character and expires on 1 January 2016.

5. Spain

150 http://www.rijksoverheid.nl/onderwerpen/maatschappelijk-verantwoord-ondernemen/nederlandse-beleid-voor-mvo/transparantiebenchmark-mvo

151 Such as organisation profile; strategy and policy; governance structure and management approach; CSR reporting policy, and results (i.e. the extents to which organisations are transparent about their policy, performance and targets in the field of economy, environment and society).

152 Such as: relevance; clarity; reliability; involvement of stakeholders; and contextual history.

- The Sustainable Economy Act[153] adopted in 2011 states that from 2012, state-owned companies are required to produce annual corporate governance and sustainability reports. Such reports shall be prepared in accordance with generally accepted standards, with a special focus on gender equality and people with disabilities. If the corporation has more than 1000 employees, this report must also be notified to the Spanish Corporate Social Responsibility Council (Consejo Estatal de Responsabilidad Social Empresarial or "CERSE").

- The Law partially includes an amendment specifying that Spanish SA corporations (*sociedades anónimas*) may publish their policies and outcomes in CSR matters each year in a specific report, which must mention whether or not this information has been examined by an independent third party. It is suggested that the Government will make available a set of characteristics and indicators for self-evaluation in social responsibility, in accordance with international standards.

- As regards boards' diversity, Article 75 of the Spanish Organic Law on gender equality of 2007 encourages large companies to adjust the composition of their boards gradually until each sex makes up at least 40 % by 2015. The rule is a recommendation and no sanction is foreseen in case of non-compliance.

6. Sweden

- Since 2009 (fiscal year starting 1 January 2008), fully or partly state-owned companies have been required to prepare a sustainability report based on the GRI Guidelines[154]. To this end, a guide was adopted on 29 November 2007 called "Guidelines for External Reporting by State-Owned Companies"

- Amongst others, the report should include ethical issues, the environment, human rights, gender equality and diversity. Following the GRI guidelines, a sustainability report shall include a brief analysis of, *inter alia*: sustainability issues; non-financial risks and opportunities needed to understand the company's development and position; stakeholder analysis and dialogue; strategies and adaptation to requirements for sustainable development.

- Although state-owned companies must report, the guidelines are based on the principle of 'comply or explain' (enabling the guidelines to be applicable and relevant to all companies, regardless of size or industry). Sustainability reports will be quality assured by independent scrutiny and assurance and have to be published in compliance with the reporting cycle for the annual report. Compliance with these guidelines will be assessed and reported on in the Government's annual report on state-owned companies.

- As regards board diversity, as of 2004 the Swedish corporate code recommends that companies should strive for more gender equality on their board. Middle sized and large companies are also obliged to disclose data on the number of women in their top level positions. The nominating committee is required to publish a statement on the company's website outlining the selection process and explaining the motivations behind each selection, also with respect to gender equality.

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153 For information on the Sustainable Economy Act: http://www.boe.es/boe/dias/2011/03/05/pdfs/BOE-A-2011-4117.pdf

154 See http://www.sweden.gov.se/sb/d/2025/a/94125

7. United Kingdom

- Following a public consultation organised in 2010, the Department for Business and Innovation skills launched a follow up consultation on the "Future of Narrative Reporting" that was closed in November 2011. The consultation sought views on Government plans to make narrative reporting simpler, clearer and more focused. The UK Government received 116 responses[155] that showed a great deal of support for perspective regulatory initiatives on changing the current format of narrative reports; simplifying disclosure requirements; and introducing more disclosure and shareholders' control on executives' remunerations.

- In particular, in order to provide a clearer structure for companies and investors, the consultation papers propose to replace the current Business Review and Director's Report with a Strategic Report and an Annual Directors' Statement. The Strategic Report will be where the board sets out and signs off the strategy, direction and challenges facing the company, evidenced by high-level financial and remuneration information. This report will provide a clear line of sight from the strategy, business model and risks of the company to the financial results and the resulting rewards for the company's directors.

- The Strategic Report will be supported by detailed information in an Annual Directors' Statement presented in a consistent and coherent format aimed at online publication. This will be much clearer for users to follow and will provide a platform from which future developments (i.e., tagging narrative information to make it more searchable) can be implemented. A prescribed structure with a set layout and standard headings will increase comparability for users and provide a helpful check-list of required disclosures for companies. Companies will also be able to include voluntary disclosures (for example on social and environmental issues) in the Annual Directors' Statement, increasing the visibility of this information and making the Annual Directors Statement the key source of detailed information on specific aspects of company performance.

- On this basis, draft regulations were published for public comments in October 2012. Once the necessary decision-making procedures are completed, the regulations are expected to come into force in October 2013. This means that companies with reporting years ending after October next year will be expected to prepare their annual report in line with the new regulations.

- The Companies Act 2006 requires all companies, other than those defined as small, to produce a Business Review as part of the annual Directors' Report. To the extent necessary for an understanding of the business, companies have to report on environmental, employee, social and community matters or essential contractual or other arrangements. If the Business Review does not contain information on any of these issues, this must be stated.

- As regards boards' diversity, an Independent Review into Women in Board, led by Lord Davies and concluded in February 2011, recommends that UK listed companies in the FTSE 100 should be aiming for a minimum of 25% female board member representation by 2015. It considered that a business-led approach to increase the number of women on company boards should be preferred to binding quotas. Following the Davies Review, the UK Corporate Governance has been modified in October 2011. A new rule, applicable as

[155] See http://www.bis.gov.uk/assets/biscore/business-law/docs/f/12-588-future-of-narrative-reporting-government-response

of October 2012 will require listed companies to report annually on their boardroom diversity policy, including gender, and on any measurable objectives that the board has set for implementing the policy and the progress it had made in achieving the objectives. The diversity of the board, including gender, will also have to be considered as one of the factors when evaluating its effectiveness.

Annex IV

International frameworks

1. OECD guidelines for Multinational Enterprises

The Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. The latest edition[156] of the guidelines extends to some 80 pages. They provide voluntary principles and frameworks for responsible business conduct in areas such as employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation. The guidelines also provide advice on implementation. A comparison of a slightly earlier version of OECD guidelines[157] and GRI guidelines, shown below, is also published by OECD. There is now a partnership between OECD and GRI.

http://dx.doi.org/10.1787/9789264115415-en

2. Global Reporting Initiative (GRI)

The Sustainability Reporting Framework provides guidance on how organisations can disclose their sustainability performance. It consists of the Sustainability Reporting Guidelines, Sector Supplements and the Technical Protocol. There are in addition sector supplements dealing with electrical utilities, financial services, food processing, mining and metals and NGOs. Other sector supplements are being prepared or piloted. It is understood that 1600 companies worldwide report using GRI standards

The key parts of the Sustainability Reporting Framework are as follows. The text is based on GRI's description of the framework

- The Sustainability Reporting Guidelines feature Performance Indicators and Management Disclosures that organisations can adopt voluntarily. The G3.1 Guidelines[158] are the latest and most complete version of GRI's G3 Sustainability Reporting Guidelines. These Guidelines are based on G3 but contain expanded guidance on local community impacts, human rights and gender.

- Sector Supplements - Sector Supplements are tailored versions of the Sustainability Reporting Guidelines that cover sector specific issues.

- The Technical Protocol - The Technical Protocol provides process guidance on how to define the content of a sustainability report.

  The G3 version of the guidelines is currently being amended, and the G4 is expected to be adopted in May 2013.

https://www.globalreporting.org/Pages/default.aspx

3. UN Global Compact

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156 OECD Guidelines for Multinational Enterprises, http://www.oecd.org/dataoecd/43/29/48004323.pdf

157 Synergies between the OECD Guidelines for Multinational Enterprises and the GRI 2002 Sustainability Reporting Guidelines retrieved at: *http://www.oecd.org/dataoecd/25/26/35150230.pdf*

158 See http://www.globalreporting.org/ReportingFramework/G31Guidelines/

UNGC is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption. The UN Global Compact is based on ten principles derived from other material including:

- The Universal Declaration of Human Rights
- The International Labour Organisation's Declaration on Fundamental Principles and Rights at Work
- The Rio Declaration on Environment and Development
- The United Nations Convention Against Corruption

http://www.unglobalcompact.org/

4. UN "Protect, Respect and Remedy" Framework

In June 2008, after three years of extensive research and consultations, the Human Rights Council unanimously approved a framework on business and human rights proposed by UN Special Representative Prof. John Ruggie. The framework rests on three pillars:

- the state duty to protect against human rights abuses by third parties, including business;
- the corporate responsibility to respect human rights; and
- greater access by victims to effective remedy, both judicial and non-judicial.

As explained in 2011 Guiding Principles on Business and Human Rights[159], appropriate levels of transparency and disclosure are seen as key corporate-level mechanisms to provide a measure of accountability to groups or individuals who may be impacted and to other relevant stakeholders, including investors.

http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework

5. ISO 26000

The International Standard ISO 26000:2010, Guidance on social responsibility, provides guidance on reporting social responsibility. It is a non-mandatory standard aimed at all types of organization to encourage the implementation of best practice in social responsibility worldwide. ISO 26000:2010 provides guidance to all types of organisations, regardless of their size or location, on:

- concepts, terms and definitions related to social responsibility;
- the background, trends and characteristics of social responsibility;
- principles and practices relating to social responsibility;
- the core subjects and issues of social responsibility;

[159] See in particular Guiding Principle 21: http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf

- integrating, implementing and promoting socially responsible behaviour throughout the organisation and, through its policies and practices, within its sphere of influence;

- identifying and engaging with stakeholders; and

- communicating commitments, performance and other information related to social responsibility.

ISO also publish other standards including, notably, **ISO 14001** first published in 1996. ISO 14001 specifies the requirements for an environmental management system. It applies to those environmental aspects which the organisation has control and over which it can be expected to have an influence. Organizations can obtain external ISO 14001 certification.

http://www.iso.org/iso/social_responsibility

6. ILO Tri-partite Declaration of Principles concerning Multinational Enterprises and Social Policies

The principles outlined in this universal instrument offer guidelines to multinational enterprises (MNEs), governments, and employers' and workers' organisations in such areas as employment, decent conditions of work and life, and impact of the industrial activities. They have been first adopted by the Governing Body of the International Labour Office in 1977 and afterward amended in November 2000 and March 2006. Its provisions are reinforced by certain international labour Conventions and Recommendations which the social partners are urged to bear in mind and apply, to the greatest extent possible.

There are a large number of other initiatives including those by the World Bank Group and accountancy bodies and standard setters. For example, IFAC (the International Federation of Accountants) has published a sustainability framework. There are also efforts to integrate the various guidelines.

http://www.ilo.org/empent/Publications/WCMS_094386/lang--en/index.htm

7. Carbon Disclosure Project (CDP)

The Carbon Disclosure Project provides a global disclosure system for companies to report to investors covering carbon, energy and climate issues as well as water and forests. It also provides a framework for assessing the climate performance of companies and drive improvements through shareholder engagement.

- Over 4,100 organizations, including 81% of the world's largest public companies, use CDP to disclose their impacts on the environment and natural resources to stakeholders;

- 722 investors representing US$87 trillion request corporate climate data through CDP;

https://www.cdproject.net

Annex V

Other EU Initiatives on Diversity

On 20 July 2011, the Commission proposed measures aiming at enhancing diversity on board of credit institutions and investment firms in the framework of the proposal reviewing the Capital Requirements Directive. The Commission's proposal[160], consisting of a package of two instruments, strengthens *inter alia* the requirements with regard to corporate governance arrangements and processes and introduces new rules aimed at increasing the effectiveness of risk oversight by boards. On 20 March 2013, a political agreement was reached in trilogue. Institutions will be required to put in place a policy promoting diversity on the management body. More specifically, nomination committees will also be required to decide on a target for the representation of the underrepresented gender in the management body and prepare a policy on how to increase the number of the underrepresented gender in order to meet that target. The target, the policy and its implementation shall be made public.

On 12 December 2012, the Commission adopted its "Action Plan: European company law and corporate governance – a modern legal framework for more engaged shareholders and sustainable companies"[161]. The Commission, encouraged by the results of the 2011 Green Paper consultation[162], considers that increased transparency as regards board diversity policy could make companies reflect more on the issue and take better account of the need for greater diversity on their boards.. The Action Plan moreover recognises the importance of diversity of competences and views among the board's members. Diversity facilitates understanding of the business organisation and affairs and thus enables the board to challenge the management's decisions objectively and constructively. In contrast, insufficient diversity could lead to a so-called group-think process, translating into less debate, fewer ideas and challenges in the boardroom and potentially less effective oversight of the management board or executive directors. The current initiative on board diversity is the first step in the follow-up of the Green Paper.

These initiatives are complementary to the specific Commission proposal on improving the gender balance among non-executive directors of listed companies, adopted on 14 November 2012[163]. The proposed Directive sets an objective of a 40% presence of the under-represented sex among non-executive directors of companies listed on stock exchanges. Companies which have a lower share (less than 40%) of the under-represented sex among the non-executive directors will be required to make appointments to those positions on the basis of a comparative analysis of the qualifications of each candidate, by applying clear, gender-neutral and unambiguous criteria. Given equal qualification, priority shall be given to the under-represented sex. The objective of attaining at least 40% membership of the under-represented sex for the non-executive positions should thus be met by 2020 while public undertakings – over which public authorities exercise a dominant influence – will have two years less, until 2018. The proposal is expected to apply to around 5 000 listed companies in the European Union. It does not apply to small and medium-sized enterprises (companies with less than 250

[160] See http://ec.europa.eu/internal_market/bank/regcapital/index_en.htm

[161] See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0740:FIN:EN:PDF.

[162] Green Paper on the EU Corporate Governance Framework, http://ec.europa.eu/internal_market/company/modern/corporate-governance-framework_en.htm

[163] Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directories of companies listed on stock exchanges and related measures, 14 November 2012, COM(2012) 614 final. See http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0614:FIN:en:PDF

employees and an annual worldwide turnover not exceeding 50 million EUR) or non-listed companies.

Other initiatives undertaken by the Commission focus more on gender diversity. The EU Strategy for Equality between Women and Men (2010-2015)[164] reaffirms the European Commission's commitment to working to increase the percentage of women in positions of responsibility. Furthermore, the 2011 "Women on the Board Pledge for Europe" has been a call to publicly listed companies to sign a voluntary agreement to get more women into top jobs. The objective is to reach the target of 30% of women on boardrooms of listed companies by 2015 and 40% by 2020[165].

The European Parliament underlines in its resolution of 29 March 2012 on corporate governance framework[166] the importance of having a broad and diverse set of skills and competences represented in the boards. In its Resolution on women and business leadership of June 2011[167] it called for an increase on women's representation in corporate management bodies, while in its Resolution on equality between women and men in the European Union of March 2012[168] reiterated its call from 2011 for legislation in order to ensure a balanced presence of women in business.

The European Economic and Social Committee acknowledges in its Opinion on the Green Paper "The EU corporate governance framework" the importance of an appropriate balance between experience, expertise, competence and diversity of board members, "particularly to avoid the follow behaviour and encourage the emergence of new ideas", as well as the importance of reporting on the diversity policy[169].

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[164] See http://ec.europa.eu/justice/gender-equality/index_en.htm

[165] See http://ec.europa.eu/commission_2010-2014/reding/multimedia/news/2011/03/20110301_en.htm

[166] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bTA%2bP7-TA-2012-0118%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN

[167] The resolution states that the recruitment to positions in corporate management bodies should be based on the competence in the form of skills, qualifications and experience and that the principles of transparency, objectiveness, inclusiveness, effectiveness, non-discrimination and gender equality must be observed. To this end it calls on the Commission to propose legislation, including quotas, by 2012 to increase female representation in corporate management bodies. For more details see http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2011-0210&language=EN#title1

[168] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bTA%2bP7-TA-2012-0069%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN

[169] Opinion of the European Economic and Social Committee on the ‘Green Paper - The EU corporate governance framework', COM(2011) 164 final, (2012/C 24/21), http://www.eesc.europa.eu/?i=portal.en.int-opinions.18562

Annex VI

Disclosure of Non-Financial Information:

Detailed Analysis of Policy Options

Option 0 - No policy change

This policy option constitutes the "business as usual" scenario. Under this option, no initiative is taken at EU level to change the current situation. The current text of art 46(b) of the Fourth Directive would remain in force.

Effectiveness *(quantity, quality of information)*	A detailed explanation on "how the problem will evolve without action" is given in section 3.4.1 of the impact assessment. On the basis of that reasoning, the Commission services consider that this policy option is unlikely to trigger any significant improvement in the level of transparency. The non-financial performances of EU companies have been the subject of considerable and growing interest from users and civil society for many years, and it has always been possible for them to disclose information in compliance with the Accounting Directives, or beyond what is required by law on a voluntary basis. However, disclosing non-financial information remains a practice for only a small minority of EU companies and most EU large companies do not formally disclose any non-financial information.
Efficiency (compliance costs)	Companies would not be forced to incur additional administrative burden or costs
Acceptability to stakeholders	The public consultation revealed mixed views on this aspect. A majority of preparers considered that the current reporting framework provides them with a sufficient degree of flexibility and should not be modified. On the contrary, a strong majority of users, including in particular investors, NGOs and other civil society organizations[170], consider that the lack of information in the public domain poses a serious problem in terms of overall transparency, as the current reporting figures still fail to meet their demand for non-financial information and to provide the market with a sufficient degree of transparency. The information disclosed is generally considered by the users as lacking in materiality, balance and accuracy, and thus not sufficiently timely, clear, comparable and/or reliable
Competitiveness	No further obligation would be imposed. However, EU companies would at the same time fail to exploit the benefits that increased and better disclosure of non-financial information could bring.
Coherence with other EU legislation	The Commission has recently proposed to review the Accounting and Transparency Directives with the aim to simplify and reduce the administrative burden, especially for the smallest companies. In this respect, a no-policy change scenario, whereby no additional requirements are introduced, could be coherent with the simplification objective. However, it should also be taken into account that greater transparency in the non-

[170] See public consultation report, p. 6

financial domain remains a policy objective endorsed by several Commission initiatives, including the CSR Communication, the SMA, and the Green paper on Corporate Governance.

Impact on Fundamental Rights	The impact of such option on fundamental rights would be very limited. While the current provision already demands to disclose information on environmental and employees-related matters, this requirement has been widely interpreted as 'voluntary' (see section 3.1). Therefore its actual impact on fundamental rights – such as freedom of expression and information; environmental protection and workers' right to information – has been modest.

Option 1 – Requiring a non-financial disclosure in the Annual Report.

This option would require companies to disclose information in the form of a statement in their Annual Report. Compared to the baseline scenario, this option would expand the required topical areas: companies would be required to disclose material information concerning at least social (including employees), environmental, human rights, anti-corruption and bribery matters.

Moreover, the statement would have to include a description of the following elements: policies pursued by the company on the above-referred matters; their results; and risk-management related aspects. In order to ensure appropriate flexibility to those companies that do not have a specific policy in place in one or more of the above-mentioned areas, the possibility to explain why this is the case would also be offered. Finally, companies should rely on existing international frameworks when providing such analysis.

Effectiveness *(quantity, quality of information)*	*Quantity of information:* an amendment to the current disclosure requirements would determine a higher quantity of information compared to the current situation. As explained above, the high level of discretion currently enjoyed by companies (information has to be disclosed only where appropriate and if relevant to the companies' business) has led most companies to consider such requirement as entirely voluntary. Option 1 would, however, significantly reduce the current level of legal uncertainty, as companies would be required to disclose material information on a mandatory basis. The number of EU companies disclosing non-financial information would, as a consequence, significantly increase. *Quality of information:* The quality of the information could also limitedly benefit by a strengthened legislative requirement. Firstly, the notion of non-financial information would be expanded as to cover at least all material issues related to **social, (including employees) environmental, human-rights, anti-corruption and bribery aspects**, whereas the current provisions makes specific reference to environment and employees-related matters only. Although such list is not intended to be exhaustive, in the analysis of the Commission services its inclusion would represent a concrete improvement as regards the content of the disclosure. Several considerations should be mentioned in this respect: firstly, the above mentioned topics represent the issues commonly covered by most of the

existing international frameworks[171]; secondly, they represent the topics for which there is the highest demand by stakeholders, and thirdly, disclosing information on at least these topics would give a sufficient, if not exhaustive, overview of the non-financial situation of a company. Nevertheless, information would most likely be disclosed in a concise form, therefore such statement would only partly respond to the stakeholders' demands in terms of accuracy and comprehensiveness of the information.

On the other hand, unlike the baseline scenario, the disclosure would have to include material information on policies, results and risk-management issues of a company, aspects which are often overlooked in current disclosures. The minimum level of harmonisation introduced by the new requirements would also contribute to increase comparability amongst companies, as users would have access to this information in a consistent manner. It would also improve the possibility to compare performances of the same company over time, as information would be disclosed on a yearly basis. Finally, the same verification requirements currently in force for art. 46 (b) would apply to Option 1. The information disclosed in the statement would consequently be checked for consistency with the financial statements[172].

Efficiency

(compliance costs)

There would be increased administrative burden in line with the scope of the policy, as the disclosure of all material information in all the above mentioned areas is likely to be more costly than the current reporting requirement. Firstly, a mandatory disclosure provided in compliance with the criteria set out by Option 1 may add to the length of annual reports, as companies would enjoy a reduced level of discretion and the quantity of information disclosed would most likely be broader than the current practice. Companies may therefore incur additional costs relating in particular to drafting, publication, or specific staff training. In this respect, some additional data may also need to be collected.

However, one should bear in mind that such Option would merely strengthen a legislative requirement already existing under the Accounting Directives. It can therefore be assumed that the necessary systems and procedures should already be in place in many companies. Furthermore, Option 1 provides also companies with the possibility to give a reasoned explanation, in case information is not available or cannot be disclosed for any reasons.

As far as verification is concerned, Option 1 would not add any additional requirement compared to the baseline scenario. The increase in the quantity of information disclosed may nevertheless slightly increase the cost of such verification. This would depend on the actual disclosure, and is estimated to be a negligible increase of the overall verification costs.

On the basis of the analysis carried out by the Commission Services, the

[171] In particular, the Ten Principles of the United Nations Global Compact are shaped around these four broad areas. Information disclosed under the GRI framework would also have to contain at least this information.

[172] Art 51a (e) of the Fourth Directive states the statutory audits shall also contain an opinion concerning the consistency or otherwise of the annual report with the annual accounts for the same financial year.

cost of such disclosure can be estimated to be between 600 and 4300 euros per year per company. Its impact is therefore expected to be relatively low. More details on the estimates of administrative burden are given in Annex IX.

Acceptability to stakeholders

The results of the various consultations have highlighted that information disclosed under Option 1 would meet the users' minimum needs in terms of transparency, as regards both the quantity and quality of the information provided. A strong majority of users identified social, environmental, human rights and anti-corruption aspects, along with the description of the policy pursued by the company in these areas, its results of and the risk-management aspects, as the core elements of a meaningful disclosure. They are therefore considered as a minimum requirement in order to obtain a transparency improvement compared to the current situation. However, some users also argue that information disclosed in the form of a statement would not be sufficiently detailed and accurate. Some preparers would consider such option less favourably, as it would reduce the level of discretion they can currently enjoy when complying with art 46 (b).

Competitiveness

In terms of competitiveness, Option 1 would, on the one hand, introduce a level playing field, as EU large listed and non-listed companies would have to disclose a similar set of non-financial information. It follows that all concerned companies could benefit from a better management of their non-financial policies and performances. By introducing a minimum level of harmonisation in this field, Option 1 could also contribute to solving the problems highlighted in section 3 concerning the fragmentation of the different legal frameworks within the Internal Market. Importantly, amongst the preparers consulted, none of those established in MS where more stringent mandatory disclosure requirements are already enforced reported any competitiveness problems compared to those established in MS with less stringent legislation.

In terms of global competitiveness, EU companies would indeed have to bear slightly higher costs than companies established or headquartered in third jurisdictions where non-financial disclosure is not regulated. However, evidenced gathered by the Commission services demonstrates that the additional administrative burden would be fairly limited, and moreover, the potential benefits are likely to outweigh the cost, thus rendering EU companies more competitive on a global level. Moreover, Option 1 is designed in a way to be consistent with the different existing international frameworks, as the disclosure requirements are built upon the broad areas already covered by the various initiatives. This would imply that there would be no competitiveness losses vis-à-vis those companies voluntarily applying such frameworks on a global level. On the contrary, the voluntary uptake of different international frameworks demonstrates that an increasing number of companies realises the benefits of increased transparency with regard to competitiveness.

Coherence with other EU

Such requirement would be in line with the transparency needs which the Commission has already endorsed in the Single Market Act as well as in the CSR Communication. As the scope of application is limited to large listed

legislation	and non-listed companies only, it would not be in conflict with the simplification exercise currently undergoing as regards the revision of the Accounting and Transparency Directives.
Impact on Fundamental Rights	It can be expected that, in the long term, more transparent and efficient disclosure practices will also have a positive effect on fundamental rights, in particular *on the freedom of expression and information* (as defined by Article 11 of the Charter of Fundamental Rights of the EU), *Workers' right to information* (Article 27) and *Environmental* (Article 37)[173]. Such disclosure requirements and practices are likely to encourage companies to develop or improve their activities relating or having an impact on fundamental rights, due in particular to a larger public scrutiny. There would not be any restricting effects on the fundamental rights in general. By specifically requiring companies to disclose material risks in the field of human rights, this option is likely to have a remarkable positive effect on human rights awareness and encourage companies to consider their responsibility to respect human rights. It is therefore likely to reduce instances of EU company involvement in human rights harm.

Option 2 – Detailed reporting

This option examines the idea of requiring companies to publish a detailed report, rather than disclosing information in the form of a statement. Such reports would have to cover the same topical areas mentioned under Option 1 above, as well as any other issue that the company may consider material. The report should be drafted in accordance with high quality reporting principles, guidelines or standards that are internationally accepted. To the extent necessary for its understanding, the report should also include, if appropriate, relevant non-financial key performance indicators (KPIs).

Option 2 is split into three sub-options, based on the nature of the requirement:

- *Under Option 2a all large and listed companies would provide a non-financial report on a mandatory basis.*
- *Option 2b would instead introduce a "report or explain" obligation: companies who do not provide a report would have to give a clear and reasoned explanation as to why this is the case.*
- *Finally, under Option 2c there would be no legal obligation to provide a detailed report. However, in order to recognise best practices and avoid duplication of disclosure requirements, companies providing a detailed report on a voluntary basis would be exempted from other disclosure obligations, provided that such report complies with the same content requirements set by option 1, makes reference to international frameworks and is annexed to the Annual Report.*

2.a - Mandatory

Effectiveness	*Quantity of information*: Disclosure in the form of a full report, rather than a statement, would maximise the level of quantity of information available to

173 Charter of Fundament Rights of the European Union, http://www.europarl.europa.eu/charter/pdf/text_en.pdf

(quantity, quality of information)

the public, as this policy option would have the effect of increasing the number of reports produced by EU companies. A non-financial report covering at least all the content areas described under Option 1 would therefore have the potential to give a full and comprehensive overview of the non-financial situation of a given company. Such option would therefore achieve a greater level of transparency than Option 1.

Quality of information: the information disclosed in the form of a full report would by definition be more detailed, accurate and comprehensive than information disclosed in the form of a statement. Moreover, Option 2 would introduce a mandatory reference to high quality reporting principles, guidelines or standards that are internationally accepted. The use of internationally accepted frameworks would also improve the reliability and accuracy of the information disclosed, as criteria concerning the scope, content and level of detail of the information would be determined by using an external reference. However, the effectiveness of such provision is sometimes questioned. First of all, requiring detailed disclosure might result in companies perceiving reporting just as an additional administrative burden to comply with. This attitude would result in a 'tick the box' exercise, which would fail to change companies' strategic, long term approach to non-financial risk management. Furthermore, given that the content, nature and scope of existing frameworks can be rather different, the impact of this proposal on comparability would be limited.

Efficiency

(compliance costs)

The administrative burden carried by this option would be undoubtedly higher than under Option 1. According to a study conducted by CSES, the total cost of disclosing non-financial information in the form of a full report can be estimated to be in the range of €155000 to €604000[174] per year per company, with a cost per employee varying between €3 and €13. Such estimate include all costs relating to the drafting of the report, its publication, additional ad-hoc data collection costs, annual costs such as training as well as potential external assurance. The cost of drafting the report can in itself amount to between €91000 and €331000. The publication costs are also not negligible, depending on the company's approach.[175] As far as verification is concerned, Option 2 would not change the baseline scenario, as companies would be left free to decide whether to provide a form of assurance or not. External voluntary assurance may also represent an important part of this cost, varying between €22000 and €114000[176].

According to other estimates[177], the cost of producing a comparable detailed report could vary between €33000 and €357 000, depending on the size of the company. Moreover, the cost of verification of such reports could amount to an additional €7200 to €100000, depending on the size of the organization as well as the type of certification required, the amount and

[174] CSES, 2011, p. 26 and 32.
[175] *Ibid.*
[176] Companies surveyed were asked to provide an estimate, to the nearest thousand, on assurance costs related to the drafting of the non-financial report.
[177] Data provided to the Commission Services by the French government, based on assessment made on relevant requirements in French legislation

complexity of data analysed, the nature of a company's activities and their technical complexity.

On the basis of the figures collected, the cost of a full mandatory reporting obligation could therefore be roughly estimated in a range varying between €33000 and €604000 per year per company. In general terms, the above-mentioned figures may depend on the complexity of a company and its operations and would also be likely to be at the higher range in the first period of implementation of a potential legislation, or for first time reporters, while decreasing over the years. Some of the experts consulted[178] agreed that set-up costs could be substantial. However, they also argued that costs would decrease over time and progressive benefits of long-term investment and better management should also be considered.

Acceptability to stakeholders

The public consultations have shown that a majority of preparers would be opposed to mandatory reporting in the form of a full report, namely because of the excessive administrative burden this option would carry[179]. On the contrary, most users would consider this option more favourably than Option 1, as it would bring greater transparency benefits, particularly as regards the quantity of information. At the same time, mixed views are expressed as regards the potential benefits this option could bring in terms of overall quality and comparability. On the one hand, some stakeholders would consider the use of internationally accepted frameworks as an important achievement. On the other hand, others raise the argument that such frameworks are still very diverse, and such a reference would not allow for proper benchmarking. Finally, most civil society organisations and NGOs call for stricter requirements concerning verification, as this is seen as a key tool to increase accuracy and reliability of the information.

Competitiveness

The various consultations carried out by the Commission services, including the advice of the ad-hoc Expert group, have highlighted that more transparent non-financial reporting practices could produce significant economic benefits through better risk and cost management and better overall definition of corporate strategies. A consistent body of academic literature also suggests that increased transparency in this field would lead to better financial and non-financial performances, and contribute to a more efficient allocation of capital within the internal market, potentially resulting in a higher degree of competitiveness across the EU.[180] Moreover, Option 2a is designed in such a way as to be consistent with the existing international frameworks in this field. It follows that the competitive situation of EU companies would not be undermined vis-à-vis those companies already applying such frameworks at global level on a voluntary basis.

However, in order to properly assess the benefits that Option 2a could bring in terms of overall competitiveness, due account of the related compliance costs also needs to be taken. It appears that, especially in the first period of

[178] Minutes of the ad-hoc expert group Meeting of 11 July 2011, http://ec.europa.eu/internal_market/accounting/docs/11072011_minutes_en.pdf

[179] Public Consultation Summary report, p. 8

[180] Porter and Kramer, 2006; Ioannou and Serafeim, 2011.

implementation, the costs of the increased administrative burden could be significant, and a mandatory obligation to produce a full report could potentially affect the competitive position of EU companies vis-à-vis companies established in third jurisdictions where such mandatory reporting obligation is not enforced.

Coherence with other EU legislation	As for Option 1, a mandatory reporting obligation would be in line with the policy objectives that the Commission has already endorsed in the SMA as well as in the CSR Communication. As the scope of application is limited to large and listed companies only, it would not be in conflict with the simplification exercise on the revision of the Accounting and Transparency Directives currently undergoing. However, as this option is likely to determine a significantly increased administrative burden, there may be conflict with the overall policy objective of reducing the administrative burden, as set out in the Action Programme for Reducing Administrative Burdens in the European Union, presented by the European Commission in January 2007[181].
Impact on Fundamental Rights	The same considerations made for option 1 above would apply. By maximising the quantity of information, such option would probably bring greater benefits than Option 1. However, due to the consequent increase in the administrative burden, the possibility of a prejudice to the freedom to conduct a business (Article 16 of the Chart) should be considered[182].

2.b – Report or Explain

Effectiveness *(quantity, quality of information)*	*Quantity of information*: Companies could opt to produce a report or explain why they choose not to do so. As a consequence, Option 2b would, by definition, be less effective than Option 2a and Option 1 as regards the quantity of information. Besides the obligation set forth by the Accounting Directives, various mechanisms for voluntary reporting already exist and, despite their global uptake, the number of EU companies producing non-financial reports on a voluntary basis remains still extremely low. Nevertheless, an obligation to "explain" the reasons for not reporting may still represent an incentive for EU companies to assess the financial and non-financial opportunities provided by higher transparency, and thus engage in more transparent reporting practices. The Danish experience, where a sort of comply or explain obligation has been in place since 2009[183], shows that 97% of companies have chosen to report on a voluntary basis following this approach. Academic evidence also suggests that such a system could represent an incentive for companies to engage in more transparent reporting, namely due to peer pressure or reputational considerations. *Quality of information:* In general terms, mixed views are expressed by stakeholders as regards the potential of a "report or explain" obligation to increase the quality of information, as this very much depends on the content

[181] http://ec.europa.eu/enterprise/policies/smart-regulation/administrative-burdens/index_en.htm

[182] Charter of Fundament Rights of the European Union, http://www.europarl.europa.eu/charter/pdf/text_en.pdf

[183] "Corporate Social Responsibility and Reporting in Denmark – Impact of the legal requirement for reporting on CSR in the Danish Financial Statements Act", Danish Commerce and Companies Agency, 2010, www.CSRgov.dk.

of the requirement itself[184]. In this specific case, Option 2b would require the same content as Option 2a. The information disclosed in the form of a full report could be more detailed, accurate and comprehensive than a statement (Option 1), resulting in a major improvement of the baseline scenario The use of internationally accepted frameworks would also improve the reliability and accuracy of such information, although the improvements in terms of comparability would be limited. On the other hand, a preliminary assessment of the Danish approach[185] shows that reports quality is improving less rapidly than their quantity. Companies struggle to fully comply with the requirements and disclose balanced and comprehensive information on more contentious issues such as human rights and corruption.

Efficiency

(compliance costs)

In terms of overall compliance costs, the same considerations made under Option 2a above apply. However, under Option 2b such costs would only be incurred by those companies choosing to comply with the requirement, therefore they are even more difficult to be assessed *ex ante*. Therefore, companies opting for the reasoned explanation would have to bear only the costs related to this specific disclosure, which can be estimated to be comparable to the cost of an additional statement in the Annual Report as explained in Option 1. On the other hand, the additional costs for companies opting for a full compliance would be much higher. They would be comparable to Option 2a. More details are given in Annex IX.

Acceptability to stakeholders

The results of the public consultations show that preparers would prefer Option 2b to Option 2a. A majority of the companies surveyed pointed out that voluntary comply or explain requirement would be perceived as more meaningful and well-founded than a full mandatory obligation. Users could benefit from a certain increase in the quality of information disclosed by companies willing to do so, although the gain in terms of quantity of information disclosed could not be comparable to Option 2a. For this reason in particular, civil society organizations would consider this option as less preferable than Options 1 or 2a.

Competitiveness

A comply or explain requirement would not change the current situation in terms of legal fragmentation within the EU internal market. The problems related to the current fragmentation of such frameworks would persist. However, the obligation to give a reasoned explanation in case a report is not published could at the same time constitute an incentive for companies to set up appropriate systems and procedures to assess the potential benefits associated with non-financial disclosure, and thus engage in reporting practices. In this respect, there would be potential competitive gains for companies choosing to produce reports.

Option 2b would also maintain a level playing field amongst companies established or listed in EU Member States or third countries with no mandatory reporting requirements in place, thus avoiding potential competitive distortions in this respect. It is also noteworthy to underline that different forms of comply or explain obligations have already been chosen not

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[184] See the study above as well as "The Impact of the Danish Law on CSR Reporting" DanWatch, 2011. Content may vary as regards the "comply" as well as the "explain" part of the requirement.

[185] Ibid

only by several EU Member States[186], but also by third countries including, for instance, China and South Africa[187].

Coherence with other EU legislation

A comply or explain obligation would be in line with overall objectives of increasing transparency in the non-financial field already endorsed by the Commission in the SMA and the CSR Communication. As the scope of application is limited to large and listed companies only, it would not be in conflict with the simplification exercise on the revision of the Accounting and Transparency Directives currently underway.

Impact on Fundamental Rights

The same considerations made for options 1 and 2a above would apply.

Option 2c – Voluntary

Effectiveness

(quantity, quality of information)

Quantity of information: according to this option there would be no mandatory obligation to provide a detailed report. As a consequence, this option would be less effective than Option , 2a or 2b as regards the quantity of information. Nevertheless, it would recognise best practices and, by giving a conditional exemption from other relevant disclosure requirements, may constitute an incentive for companies to engage in reporting practices on a voluntary basis.

Quality of information: In order for the conditional exemption from other disclosure obligations to be applicable, information disclosed under option 2c would be subject to the same content requirements as in Option 2a. The information disclosed in the form of a report could be more detailed, accurate and comprehensive than a statement. The use of internationally accepted frameworks would also improve the accuracy of such information, although the improvements in terms of comparability would be limited. Moreover, the conditional requirement to annex the voluntary report to the Annual Report would imply an obligation to check the whole content of the report for consistency with financial statements, thus contributing to improve the reliability of the information disclosed.

Efficiency

(compliance costs)

This option would, by definition, carry no additional administrative burden, as the disclosure of a full report would remain voluntary. For companies willing to provide a detailed report on a voluntary basis, the same considerations made under Option 2a above apply. Moreover, companies deciding to provide such report would be exempted from other relevant disclosure requirements (such as those described under Option 1) provided that certain specific conditions are met. Consequently, they would not have to bear other costs relating to disclosure of such information.

Acceptability to stakeholders

The results of the public consultations show that preparers would prefer Option 2c to other Options, as it would give them maximum flexibility. On the contrary, users, and NGOs in particular, question the potential benefits of voluntary reporting, mostly based on the claim that the results achieved

[186] Besides Denmark, also Spain, Sweden and the UK have already adopted different forms of comply or explain regulations. Norway has also adopted similar legislation. See Annex 2 for more details.

[187] https://www.globalreporting.org/network/report-or-explain/Pages/default.aspx

so far are not satisfactory.

Competitiveness	A voluntary requirement would not change the current situation in terms of competitiveness. This Option would maintain a level playing field amongst companies established or listed in EU Member States or third countries with no mandatory reporting requirements in place, thus avoiding any competitive distortions. However, the potential exemption from other disclosure obligations built in this option could at the same time constitute a limited incentive for companies to recognise best practices, and thus engage in better reporting practices[188]. In this respect, there could be potential competitive gains for companies choosing to produce reports on a voluntary basis.
Coherence with other EU legislation	A fully voluntary obligation would not be entirely in line with the overall objectives of increasing transparency in the non-financial field already endorsed by the Commission in the SMA and the CSR Communication. However, on the positive side, it would be consistent with the overall policy objective of reducing the administrative burden, as set out in the Action Programme for Reducing Administrative Burdens in the European Union, presented by the European Commission in January 2007.
Impact on Fundamental Rights	The impact of such option on fundamental rights would be quite limited. When information is disclosed on a voluntary basis, the same considerations made for option 1 above would apply

Option 3 - Set up a mandatory EU-based Standard

This option would require companies to produce a non-financial report on the basis of an EU mandatory framework (Standard). Such framework would be based on a harmonised set of pre-defined Key Performance Indicators (KPIs)

Effectiveness *(quantity, quality of information)*	*Quantity of information:* Option 3 would by definition be most effective in terms of quantity of information disclosed, as all concerned companies would have to produce a report on a mandatory basis. Such requirement would therefore necessarily lead to higher quantity of information compared to the current situation, maximising the number of EU companies disclosing non-financial information. *Quality of information:* As opposed to Option 2, Option 3 would not rely on existing international frameworks to define the content of the report. It would, on the contrary, set up a specific EU standard, including a set of EU KPIs, which all concerned companies would have to comply with. This would, on the one hand, optimise the comparability of information disclosed, as all reports would by definition follow the same structure and be based on a comparable content. However, disclosing information on the basis on a set of pre-defined KPIs would also minimise the degree of flexibility left to companies, with potential detriment for the materiality of the information disclosed and thus its usefulness for users. The results of

[188] For an overview of the positive effect and limitations of voluntary reporting see "Making a Difference. Sustainability Reporting, Accountability and Organisational Change", Adams and McNicholas, 2007

[189] Public Consultation Summary report, p. 8

the public consultation have shown that tailoring an EU standard able to satisfactorily meet the needs and demands by both preparers and users would constitute a very demanding exercise, which would require significant time and resources to be developed[189].

Efficiency *(compliance costs)*	Option 3 would have high compliance costs. A precise estimate cannot be given, as it would depend on the content of a potential standard (harmonised set of rules and KPIs). However, according to the majority of the preparers surveyed, the additional costs that companies would have to bear in order to comply with Option 3 would be significant and would include integrating specific systems and practices, training of staff, collection and consolidation of additional information specifically related to the standard. It is therefore estimated that the costs of producing a report under Option 3 would at least be comparable to the costs highlighted for Option 2a above. With regard to the costs related to verification, the same considerations made for Options 1 and 2 above would apply.
Acceptability to stakeholders	The majority of the stakeholders consulted, across all groups, agreed that a *one-size-fits-all* approach would not be the most effective nor efficient solution to deal with the identified problems, and on the need to avoid the creation of a new standard that would duplicate, or overlap only partly, other existing international frameworks[190]. The results of the public consultation have shown that a strong majority of the preparers consider Option 3 as the least effective, based on the argument that it would maximise the compliance costs and potentially undermine the materiality and thus quality of the information disclosed. Users have expressed mixed views on this point: amongst the investors' community, some consider that the benefits in terms of increased comparability would be significant, whilst others believe that a specific EU approach to KPIs should be avoided, as it may bring prejudice to the materiality of the information. Some of the NGOs and other civil society organizations would on the contrary favour Option 3, as it would have the maximum potential to increase companies' accountability towards society.
Competitiveness	Within the EU, a system which is somewhat comparable to Option 3 is so far implemented in only one Member State (France). When replying to the public consultation, companies established in this MS have not reported any loss in terms of competitiveness specifically linked to this approach. However, the analysis carried out by the Commission services underlined that it is unsure whether the potential competitive gains that could result from Option 3 would be able to outweigh the additional costs that companies would have to bear. Moreover, a common set of KPIs could potentially take years to be developed and agreed upon. Such framework would also run the risk of being not fully consistent with existing national legislations, or with internationally accepted frameworks that companies are already applying on a voluntary basis.
Coherence with	Developing an EU standard for non-financial reporting would, in theory,

[190] *Ibid.*

other EU legislation	have the potential to bring EU legislation in this field to a level of detail and accuracy comparable to what is already required by the Accounting and Transparency Directives as far as financial reporting is concerned. It would also be consistent with the objective of increasing transparency of non-financial information endorsed by the SMA and the CSR Communication. However, as this option is likely to determine a significant administrative burden, it may be in conflict with the overall policy objective of reducing the administrative burden, as set out in the Action Programme for Reducing Administrative Burdens in the European Union, presented by the European Commission in January 2007.
Impact on Fundamental Rights	The same considerations made for option 1 above would apply. However, a more precise assessment would depend on the actual content of the standard.

Annex VII

Increasing Board Diversity:

Detailed Analysis of Broad Policy Options

1 DESCRIPTION

Several policy options aiming at increasing boards' diversity have been assessed, including "no policy change" scenario **(Policy Option 0).** One option (binding gender quotas) has been discarded from the outset as it is subject of a separate initiative of the Commission (see below).

Option 1 would require companies **to disclose the diversity policy** they have in place. This would translate into a requirement to include information on their diversity policy in their annual report, more precisely in their corporate governance statement. Companies would describe in this statement their diversity policy with regard to various aspects, including in particular age, gender, nationality and educational and professional background. They would have to specify the objectives of this policy, how it has been implemented and the results achieved. However, companies not having a diversity policy would not be obliged to put one in place. They would only be required to provide a clear and reasoned explanation why this is the case ("comply or explain" approach).

According to **option 2** companies would be required to take into account the **diversity as one of the criteria for the selection of a board candidate.** This means that companies would be obliged to consider not only the expertise of a given candidate, but also to which extend he/she would make the board as a whole more diversified. In practical terms, the board would have to assess its needs in terms of diversity and set specific recruitment guidelines that the nomination committee would have to consider when assessing the profile of the candidates.

Option 3 envisages the possibility of obliging companies to **establish a policy concerning diversity for boards**. The content of this policy would be determined by the companies themselves: the board would be required to establish measurable objectives (targets) for achieving diversity on the board and to assess annually both the objectives and the progress in achieving them.

The current impact assessment does not consider the option of introducing **quotas.** While setting quantitative measures seems to be an efficient tool to promote in particular gender balance on boards, they do not seem to be an appropriate instrument for diversity aspects at large. Besides, the Commission services are currently working on a separate initiative on improving gender balance on boards of listed companies, which will consider the introduction of quantitative gender objectives and increased transparency of selection procedures for board members. Thus, the current assessment will not further develop the analysis of this instrument, but will concentrate on options enhancing the boards' diversity at large. The retained policy options can be summarised as follows:

Option 0 **No policy change**

Option 1 Require companies **to disclose their diversity policy**

Option 2	Require companies to include **diversity as one of the criteria for the selection of board members**
Option 3	Require companies to **establish a diversity policy**

2 DETAILED ANALYSIS OF OPTIONS AGAINST IDENTIFIED CRITERIA

Option 0 – No policy change

This option implies not taking any action at EU level as regards boards' diversity in terms of educational and professional background, nationality, gender or age. Any possible action would be taken at national level only and companies may take steps to increase board diversity on a voluntary basis.

Effectiveness *(increase of diversity)*	A detailed explanation on "how the problem will evolve without action" is provided in section 3.4. above. On the basis of that analysis, the Commission services are of the view that this policy option is unlikely to achieve the underlying objective of enhancing boards' diversity and thus reduce the phenomenon of group-think and improve the oversight of the management by the boards. If no action is taken at EU level, progress will remain very slow, unless measures are taken at national level. As the approaches of Member States as regards the boards' diversity are very different, the important disparities between national frameworks would remain.
Efficiency (compliance costs)	Companies would not be forced to incur additional administrative burden or costs.
Acceptability to stakeholders	The results of the consultation launched by the Green Paper on the EU corporate governance framework[191] show a general support for more diversity in the boards, in terms of expertise, skills, background, gender, etc. Although most respondents rejected the idea of quotas, most of them were in favour of softer measures in favour of greater diversity. Whereas companies and business federations often considered that the current situation is satisfactory, most respondents from the civil society and the investor community supported measures in favour of more diversity.
Competitiveness	As no further obligation would be imposed, there would be no changes in this regard. However, EU companies would fail to exploit the benefits that increased disclosure of diversity in the boardroom would bring.
Coherence with other EU initiatives	The Commission services are working simultaneously on a separate proposal in order to enhance gender balance in corporate boards by way of quantitative measures at EU level. Thus, a no-policy change scenario could be regarded as a missed opportunity to propose mutually reinforcing measures creating a strong synergy in favour of better boards' diversity.
Impact on fundamental rights	There should be no impact on fundamental rights. No negative effects but also no beneficial impact.

[191] See 2011 Green Paper on Corporate Governance Framework and the feedback statement accessible at http://ec.europa.eu/internal_market/company/docs/modern/20111115-feedback-statement_en.pdf.

Option 1 – Disclosure of internal policy on diversity in the annual report

This option would seek to enhance companies' transparency as regards their boards' diversity policy. Companies would be required to disclose in the annual report their diversity policy, in particular the objectives of this policy and to which extent these objectives have been achieved. The information disclosed should cover in particular aspects such as age, gender, nationality, educational and professional background of board members.

Effectiveness

(increase of diversity)

The benefit of transparency with regard to diversity policy is that it allows for public insight, while increasing the perceived legitimacy of the actions of the company adopting a diversity policy. It creates incentives to address diversity challenges. Companies which do not have a diversity policy or do not make the necessary efforts to achieve the objectives of such policy might be subject to public criticism. The option to improve transparency is a useful tool to inform the market of corporate governance practices and thus incentivise companies to put in place diversity policies.

Efficiency (compliance costs)

The compliance costs associated with this option are relatively low. The primary costs of increased disclosure are the cost of preparing and disseminating the information. As companies, especially listed ones (irrespective of the size) do already have to publish periodic information for public use[192], the additional cost of preparation and dissemination of information on their diversity policy will not be very high. Given that the average European board consists of 12 members[193], the processing of the information required for the disclosure should not give rise to considerable burden. In line with previous estimations made by the Commission's services for comparable disclosures[194], the preparation of an additional statement in the annual report would range between 600 and 1000 euros per year per company. As this option would merely extend the content of the corporate governance statement, costs could even be lower, especially given the limited size of a board and the fact that the description of the policy at board level would be relatively concise.

Moreover, it could be argued that the present option could have a negative impact on the pool of people available for board membership, and possibly on the objective of board expertise, because there are not enough experienced women or men from sufficiently different background to populate the board rooms of companies. However, at least with regard to gender balance, it appears that there are enough qualified women which cannot not for the time being reach leading positions in companies[195]. In addition, the disclosure requirements would not put any obligation or burden on them to reach the targets they may have voluntarily established nor impose any given means to achieve the diversity policy.

Acceptability to

This option was favoured by many respondents to the public consultation, which considered that such a soft requirement would encourage diversity

[192] See section 2.2.

[193] Heidrick & Struggles, 2011, p. 37

[194] See to this effect CRD IV Impact Assessment, Administrative burden for credit institutions and supervisors, http://ec.europa.eu/internal_market/bank/docs/regcapital/CRD4_reform/IA_directive_en.pdf

[195] See for example http://www.mckinsey.com/Client_Service/Organization/Latest_thinking/Unlocking_the_full_potential

stakeholders

but in the same time would not impose specific choices to the company[196]. Most of the respondents to the consultation were overall positive about the disclosure of a diversity policy, in particular civil society, directors' associations, employees, investors, public authorities. Respondents indicated that disclosure would enable investors to take informed decisions as to the governance practices of the specific company. Although business federations and companies were more reserved regarding disclosure of diversity policy, investors in particular indicated that, if companies are transparent on their diversity policy, they can judge better the level of ambition of the company and monitor progress.

Competitiveness

As already illustrated in previous sections, enhanced transparency on how diversity is dealt with at the board level is relevant for investors, as it enables a more informed voting and investment decision-making. The more diverse the board is, the more likely it is that more competencies and skills are brought in for the benefit of the company. Therefore, the proposed provisions not only would not hinder the capacity of EU companies to compete with counterparts in other parts of the world, but on the contrary it is assumed that they would have a positive impact on them. In terms of negative impacts as the requirement at hand would not impose specific means or targets to achieve diversity, but only to disclose what it is in place, there should not be any or they should be very limited.

Coherence with other EU initiatives

This option would be consistent with a separate initiative of the Commission on better gender balance in the boards of companies listed on stock exchanges, which is considering introducing quantitative measures. The scope of the current proposal is larger than gender diversity initiative, aiming at achieving more diversity in general, in terms of educational and professional background, nationality, age, etc. The nature of the requirement imposed is different, as the current initiative would only impose disclosure. Thus, in addition to contributing to increasing board diversity, the current initiative would also offer better information on board diversity policy to investors and civil society. It appears thus that the two initiatives would be mutually reinforcing. In particular, the enhanced disclosure requirement will be likely to contribute to the implementation of the quantitive targets by companies. Given that it would exempt listed SMEs, it would also be coherent with the general policy of the European Commission to reduce the administrative and regulatory burden in order to facilitate the start-up and development of the SMEs.

This option is also consistant with the measures aiming at enhancing boards' diversity in financial institutions in the framework of the proposal reviewing the current Capital Requirements Directive. As regards corporate governance, one should make the difference between financial institutions and listed companies in general. Financial institutions generate systemic risks, there is thus a need for stricter rules on their corporate governance. Banks were bailed out by governments and consequences borne by governments and population at large. In the case of listed companies, there is no need for such strict rules as shareholders, not society, would pay for

[196] See replies to the Green Paper on the EU Corporate Governance Framework accessible at http://ec.europa.eu/internal_market/consultations/2011/corporate-governance-framework_en.htm

possible failures. Moreover, listed companies are a very heterogenous group, encompassing entities of all sides and active in all economic sector, with an important role in the Internal Market for growth and job creation. It is thus of utmost importance to put forward flexible rules, which can be adapted to all listed companies. The Commission considers therefore that at this stage a measure of enhanced transparency would be more appropriate, given also the initiative on gender quotas. Imposing a diversity policy would go beyond what it is necessary to achieve the pursued objective.

Impact on fundamental rights

This option would also have a positive impact on fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union, in particular, on the *freedom to choose an occupation and right to engage in work* (Article 15), *the freedom to conduct a business* (Article 16), on *non-discrimination* (Article 21), on *equality between women and men* (Article 23). It would also allow for more public scrutiny and thus indirectly facilitate the access of more diverse directors to companies' boards, while removing potential discriminatory practices. It would take place without any negative effects on other fundamental rights. Article 7 (*Respect for private and family life*) and 8 (*Protection of personal data)* of the Charter should, in principle, not be affected by these provisions. This policy option would not as such require the publication or processing of personal data by companies. However, if companies do so, they would need to ensure that such processing is carried out in accordance with national data protection laws implementing EU data protection legislation, namely Directive 95/46/EC.

Option 2 – Diversity must be one of the criteria of Board composition

Following this option, companies would be required to regard diversity as one of the criteria which should be taken into account when selecting a board candidate. It would suppose a more rigorous and professionalised selection procedure, where precise profiles of board members should be identified before launching the recruitment process.

Effectiveness

(increase of diversity)

This option could contribute to enhancing boards' diversity by obliging companies to put diversity criteria at the same level as expertise for the purpose of recruitment to board position. Companies would have to consider not only the expertise of a candidate, but also to which extent he or she enhances the diversity of the board. Such requirement could also contribute to the professionalization of the recruitment procedure and help reduce the current practice of recruitment through co-optation. In addition, it has the advantage of being highly flexible, leaving the method to achieve the underlying objective of more diverse boards to companies.

However, it can also be argued that such general principle might not achieve its objective in practice, as it relies in the first place on the appreciation by a company of what is the appropriate diversity and on the trade-off between diversity and expertise. Most companies do not provide details on their recruitment practices. A measure focusing on recruitment alone without sufficient consideration for transparency aspects might not be enough to bring more diversity to the board.

Efficiency

There should be no direct additional costs for companies. There could be

(compliance costs)	indirect costs linked to internal processes and to remuneration of HR specialists or head hunters involved in the recruitment procedures. However, these costs are difficult to estimate and may vary from one company to another. As for the previous option, it could be argued that this option could have a negative impact on the pool of people available for Board membership as there may not be enough experienced women or men sufficiently diverse for the boardrooms of companies. However, as already mentioned, many qualified women cannot for the time being reach leading positions in companies. In addition, defining diversity as one of selection criteria leaves great flexibility to companies.
Acceptability to stakeholders	As regards measures on recruitment the opinion seems almost equally divided between those favouring specific recruitment measures to ensure that boards are suitably diverse and those opposing to them. Although most respondents to the public consultation recognised the importance of having diversity in the boards, in terms of expertise, skills, background, gender, etc., some were against regulation at EU level, considering either national level as more appropriate or even that the company should have the freedom to decide alone on such issues, for instance through its nomination committee. Many respondents who were against specific recruitment policies considered that "one size fits all" principle should not be applied in the present case.
Competitiveness	This option could also have a positive impact on the competitiveness of the companies, as enhanced transparency and therefore enhanced diversity would be beneficial to them. However, in terms of the pursued objective it would rely on the appreciation by a company of what is the appropriate diversity, while there may be potential indirect costs with an impact on companies 'competitiveness.
Coherence with other EU initiatives	This option seems also consistent with the separate initiative aiming at introducing quantitative measures for gender balance. The obligation to consider diversity as one of the selection criteria could be complementary to quantitative measures.
Impact on fundamental rights	This option would also have a positive direct impact on certain fundamental rights, i.e. on the *freedom to choose an occupation and right to engage in work*, on *non-discrimination*, on *equality between women and men*; however as already mentioned above it will rely only on the appreciation of the company, as the transparency rules will not necessarily change in order to allow for more public scrutiny. In addition, as companies would have to put the diversity criteria at the same level as expertise for the recruitment for board position, this option would have an impact on *the freedom to conduct a business*. In particular it may have a limiting effect on the entrepreneurs and shareholders' right to exercise their freedom to conduct their activities and nominate the board members.

Option 3 – Requirement to establish a policy with regard to diversity

According to this option companies would be required to establish a policy concerning boards' diversity. This means that the board would have to establish measurable objectives *for achieving diversity (targets) and to assess annually both the objectives and the progress in achieving them. Companies might also be required to introduce appropriate procedures to ensure that the policy is implemented properly and an internal review mechanism to assess the effectiveness of the policy.*

Effectiveness *(increase of diversity)*	This option could be a useful tool to promote diversity on boards, as it obliges companies to set up a diversity policy, while leaving a sufficient degree of flexibility to adjust the policy to different characteristics of the company. However, the effective implementation of this principle relies mainly on the companies itself and on the external scrutiny by shareholders. If the company's diversity policy does not benefit from enough transparency or it is not given sufficient visibility, the monitoring of its implementation can be difficult. Companies would not have appropriate incentives to really address and implement it properly. It appears therefore that this approach could not be a stand-alone option but would have to be combined with a disclosure requirement.
Efficiency (compliance costs)	There are no significant direct costs linked to this option. There could be indirect costs linked to internal processes and the recruitment and remuneration of HR specialists or head hunters that will search for required diversity, as specified in the policy. Yet, these costs are hard to estimate and will vary from one company to another. Also, to achieve the objective of diversity, some companies may have to increase the number of board members. This could lead to additional costs for the remuneration of additional directors needed. The European average remuneration of directors was 83, 500 euro in 2009, ranging from 110, 000 in Germany until 25 000 in Austria[197]. However, it is difficult to estimate the exact amount of this cost, as companies may also choose to replace existing board members to achieve the diversity objective.
Acceptability to stakeholders	The results of the public consultation show that while majority of respondents are in favour of more diversity on boards, they favour in general a flexible and principle based approach. In particular companies and business federations seem against any measures of a more binding nature. Exchanges that the Commission had with companies suggest that a requirement to adopt an obligatory diversity policy, although leaving a great degree of flexibility, could be perceived by companies as a form of interference in their internal processes. It could therefore potentially generate a negative reaction of companies subject to this requirement. Companies could then tend to limit their action in this field to a mere box ticking.
Competitiveness	This option, despite its effectiveness in achieving a diverse board, it is less flexible than other options. It could be perceived as an interference in the internal processes of companies and more burdensome as it could generate some additional costs. From this perspective, the proposed requirement could potentially have an impact on their capacity to compete on a global scale.

[197] See Heidrick & Struggle 2009, p. 16

Coherence with other EU initiatives	This option, which obliges companies to set their own diversity targets, could be less coherent with the separate initiative setting concrete quantitative objectives for gender balance. Companies would be able to set their own targets only for the other aspects of diversity.
Impact on fundamental rights	This option would have a positive direct impact on some fundamental rights (*freedom to choose an occupation* and *right to engage in work*; *non-discrimination*; *equality between women and men*), whereas on other (*the freedom to conduct a business*) it may have a restrictive effect, namely on the entrepreneurs and shareholders' right to exercise their freedom to conduct a business and nominate the board members.

3 COMPARATIVE ANALYSIS OF OPTIONS

Option 0 (no policy change) does not seem to be the most appropriate approach to reach our objective and tackle the problem of insufficient diversity of boards. In the absence of action at EU level progress will remain slow, while divergences between legal frameworks in Member States will most likely increase. The voluntary measures taken individually by companies so far have and will continue having a positive impact, but their added-value is marginal compared to other options. Moreover, not all the aspects of diversity may benefit of the same progress as gender diversity, which has been increasingly under public focus and debate.

Option 1 (disclosure of the diversity policy) appears to be, at this stage, the best approach over all to encourage companies to have more diverse boards. This option, compared to the baseline scenario, would enhance companies' transparency as regards their diversity practices, while improving the board diversity as such.

Disclosure of the diversity policy exercises indirect pressure on companies to adopt more ambitious policies and, compared to option 3, offers in addition a great deal of flexibility to companies. It would also enable investors to make more informed decisions. This option is better accepted by most stakeholders compared with a compulsory diversity policy or to an action focusing only on recruitment policy[198]. However, it should also be considered that companies may choose not to commit to increase board diversity and to put in place any diversity policy and rather give an explanation why this was the case. On the other hand, examples of measures in favour of gender balance taken in Finland and Sweden can illustrate the effectiveness of enhanced transparency. In Finland, the Corporate Governance Code recommends that both genders should be represented on the board. Companies which do not follow this recommendation, must report the deviation and give detailed reasons for it in their corporate governance statement. The general experience is that most companies are reluctant to depart from the Code due to the publicity of the departure. The disclosure duty has proved to be an efficient way to increase the number of women directors, especially because the Finnish media has actively followed the development and supported change. Indeed, whereas in 2008, when the Code was issued, only 51 per cent of Finnish listed companies had a female board member, in spring 2011 the number of companies with at least one woman board member rose to 78 per cent. This can be seen as a success as the change from 51 to 78 per cent happened in three years and without much controversy[199].

[198] See to this effect the feedback statement to the Green Paper on Corporate Governance Framework above mentioned.
[199] See Finland Chamber of Commerce, *'Men lead business operations of listed companies – Women end up in support functions'*, 2011, p. 15.

In Sweden the accounting act has imposed in 2004 on companies a duty to provide information on gender distribution on their top level positions. That information is required concerning board members, the managing director and other members of a company’s management. Since the introduction of this requirement the proportion of female board members in listed companies has notably increased, from 18% in 2003 to 26% in 2010.

In addition, it seems particularly coherent with the separate Commission initiative introducing quantitative targets for gender balance on boards, as the enhanced disclosure would probably contribute to a better implementation of the quantitative objectives. It would also have a positive impact on fundamental rights. It would in addition tackle the "group think" problem described above from a more general perspective, as it would bring more diversity in terms not only of gender, but also of educational and professional background, age, nationality, etc., while allowing companies to adapt their boards to the needs they have, the sector of activity, as well as the markets they are active on.

Option 2 (diversity as one of the criteria for the selection of board members) would therefore encourage companies to improve their current recruitment practices, by obliging them to take better account of the need for sufficient complementarity and diversity of profiles of board members. Compared to the baseline scenario it would have a positive impact on diversity as such, but to a lesser extent on the transparency of the selection of the candidates. In this respect, it relies mainly on the appreciation that the company will make of the appropriate balance between expertise and diversity. It would entail very limited administrative burden, however, as shown by the results of the consultation, it is also an option less accepted by shareholders. It seems coherent with the separate initiative on quantities measures for better gender balance.

A culture of diversity could be reflected in a diversity policy. By obliging companies to set up such a policy, **option 3** (**requirement to establish a policy with regard to diversity)** could contribute to improving the overall diversity of the boards of companies. However, if on the one hand, this policy would leave flexibility to companies in designing the diversity policy adapted to their needs and their characteristics, on the other it is more prescriptive than the other options. Although it would not put excessive burden on them, this option could generate some additional costs linked to a possible increase of the size of the boards. Moreover, an obligatory diversity policy seems at that stage less accepted by stakeholders.

Taking into account the above comparison of options, the **preferred policy option appears to be option 1 (disclosure of the diversity policy).**

Annex VIII

Estimation of Administrative burden of broad policy options

1. Transparency of Non-Financial Information

The cost estimates described below are based on the available public data, as well as on evidence gathered by the Commission services in the various consultations (online public consultation, ad hoc expert group, bilateral contacts with stakeholders). Moreover, the Centre for Strategy and Evaluation Services (CSES) was contracted to produce a study on "Disclosure of Non-Financial Information by Companies". This research paper includes a survey-based cost assessment. The sample covered 71 EU companies of all sizes established in eight different Member States[200], covering sectors such as food, consumer products, banking and financial services, manufacturing, utilities and mining. The full version of the study is available at [TO BE COMPLETED]

The scope of companies' recurring costs closely depends on the content of the requirement, as well as on how they choose to disclose relevant information. Therefore, and due to the qualitative nature of the measures potentially to be implemented, all the figures provided should be considered as estimates and a fair amount of uncertainty needs to be included in the numbers provided. Moreover, this annex does not take account of the benefits potentially stemming from the proposed measures.

Option 0: No change

Companies would not be forced to incur additional administrative burden or costs.

Option 1: Strengthen the existing disclosure requirement

There would be increased administrative burden in line with the scope of the policy, as the disclosure of the material information required by Option 1 is likely to be more costly than the current reporting requirement. Firstly, a mandatory disclosure provided in compliance with the criteria set out by Option 1 may add to the length of annual reports, as the quantity of information disclosed would most likely be broader than the current practice. However, one should bear in mind that Option 1 is merely strengthening an already existing legislative requirement. Therefore, one should assume that, despite only a minority of companies currently disclose non-financial information, most companies should already have process and systems in place to assess whether non-financial information is relevant and disclosure is appropriate.

The costs that companies may incur in relation to the business as usual scenario would consequently be limited to the additional disclosure. This may concern in particular drafting, publication, or specific staff training in some cases.

In line with previous estimations made by the Commission services for comparable disclosures (i.e. disclosure of existing policies within the Annual Report) the cost of such disclosure can be estimated to be between ~ € 600 and 1000 euros per year per company[201].

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[200] The sample covered the following Member States: Denmark, Germany, Spain, France, Italy, Netherlands, Poland and United Kingdom.

[201] See Impact Assessment on the Commission proposal on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and amending Directive 2002/87/EC of the

According to other sources, the administrative burden for companies choosing to disclose their non-financial policies in the Annual report or in an appendix to it could amount to up to ~ € 4,300 (typically spend about two working weeks-time)[202]. This figure would also factor in the collection of additional data necessary to disclose specific information concerning a given non-financial policy. On the contrary, according to the same source, companies opting to provide a statement explaining that they do not have a specific policy in a certain area would instead normally spend two working days preparing this statement, corresponding to about € 871 per company.

On this basis, the Commission services estimate that the cost of a disclosure comparable to that described under option 1 could vary in a range between € 600 per year per company and ~ €4,300 per year per company. Moreover, such estimates should be considered valid in particular for first time-reporters. There is evidence that such costs could decrease from the second year onwards[203], although no precise estimates can be provided in this respect. All figures above are estimated in accordance with the EU Standard Cost Model.

As far as verification is concerned, Option 1 would not add any additional requirement compared to the baseline scenario. The increase in the quantity of information disclosed may nevertheless slightly increase the cost of such verification. This would depend on the actual disclosure, and is estimated to be a negligible increase of the overall verification costs.

Option 2a: Require detailed reporting on a mandatory basis

The administrative burden carried by this option would undoubtedly be higher than under Option 1, and carry significant costs compared to the business as usual scenario, where detailed reporting is voluntary. According to the CSES study, the total cost of disclosing non-financial information in the form of a detailed report for large companies can be estimated to be in the range of €155000 to €604000[204] per year per company, with a cost per employee varying between €3 and €13.

Such estimate include costs relating to the drafting of the report, its publication, additional ad-hoc data collection costs, annual costs such as training as well as potential external assurance. .The cost of drafting the report could in itself amount to between €91000 and €331000. As far as verification is concerned, Option 2 would not change the baseline scenario, as companies would be left free to decide whether to provide a form of assurance or not. External voluntary assurance may also represent an important part of this cost, varying between €22000 and €114000[205]. The costs estimates provided by the CSES study can be summarised as follows:

Cost heading	Large companies		Notes
	Low	High	

European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (CRD IV), Administrative burden for credit institutions and supervisors, p. 185 http://ec.europa.eu/internal_market/bank/docs/regcapital/CRD4_reform/IA_directive_en.pdf

202 http://www.csrgov.dk/graphics/publikationer/CSR/CSR_and_Reporting_in_Denmark_2nd_year_2011.pdf

203 *Ibid.*

204 CSES, 2011, p. 26 and 32

205 Companies surveyed were asked to provide an estimate, to the nearest thousand, on assurance costs related to the drafting of the non-financial report.

Report drafting	€91000	€331000	Depends on the complexity of the company. Smaller companies tend to be closer to the lowest range.
Publication	€34000	€131,000	Depends on the publication strategy used (high number of printed reports, dedicated website)
External assurance	€22,000	€114,000	Typically larger companies only
Additional data	€8000	€23000	Typically larger companies only
Training etc	€0	€5000	Typically larger companies only
All estimations are made in accordance with the EU Standard Cost Model			

In general terms, the above-mentioned figures may depend on the complexity of a company and its operations and would also be likely to be at the higher range in the first period of implementation of a potential legislation, or for first time reporters, while decreasing over the years. Some of the experts consulted[206] agreed that set-up costs could be substantial but also considered the importance of long-term investment in view of better management, control and information tools, arguing that such costs would decrease over time.

According to other estimates[207], the cost of producing a comparable detailed report could vary between €33000 and €357 000, depending on the size of the company. Moreover, the cost of verification of such reports could amount to an additional €7200 to €100000, depending on the size of the organisation as well as the type of certification required, the amount and complexity of data analysed, the nature of a company's activities and their technical complexity.

On the basis of the figures collected, the cost of a full mandatory reporting obligation could therefore be roughly estimated in a range varying between €33000 and €604000 per year per company, including verification costs.

Option 2b: Require detailed reporting on a "comply or explain" basis

Such option would require companies to comply with the same content requirement as defined in Option 2a. However, it would also leave companies the flexibility to choose not to provide a report, provided that a reasoned explanation is given in the form of a disclosure in the Annual Report.

On this basis, the same considerations made under Option 2a above would be applicable to companies opting for full compliance. Companies opting instead for a reasoned explanation would have to bear only the costs related to this specific disclosure. This can be estimated to be comparable to the cost of an additional statement in the Annual Report, i.e. between ~ € 600 and €1000 per year per company. According to an assessment made by the Danish government, a comparable disclosure would cost around € 871 per company[208].

Option 2c: Detailed report on a voluntary basis

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[206] See minutes of the ad-hoc expert group Meeting of 11 July 2011, http://ec.europa.eu/internal_market/accounting/docs/11072011_minutes_en.pdf

[207] Data provided to the Commission Services by the French government, based on assessment made on relevant requirements in French legislation

[208] http://www.dcca.dk/graphics/publikationer/CSR/CSR_and_Reporting_in_Denmark.pdf p 18. The businesses' recurring costs depend on the type of reporting chosen and vary between EUR 871 and 4,383 per business.

Under such option, detailed reporting would remain completely voluntary. As a consequence, this option would, by definition, carry no additional administrative burden. Moreover, companies deciding to provide such report on a voluntary basis would be exempted from other relevant disclosure requirements (such as those described under Option 1) provided that certain specific conditions are met. As for the costs incurred by companies to provide a voluntary report, the same considerations made under Option 2a above would be applicable.

Option 3: Set up a mandatory EU Reporting Standard

Option 3 would maximise the compliance costs, as companies would not only have to carry the burden of producing reports on a mandatory basis, but would also have to do so in compliance with an harmonised set of rules and KPIs. A precise estimate cannot be given, as it would depend on the content of a potential standard. However, according to the majority of the preparers surveyed, the additional costs that companies would have to bear in order to comply with Option 3 would be significant and would include integrating specific systems and practices, training of staff, collection and consolidation of additional information specifically related to the standard. It is therefore estimated that the costs of producing a report under Option 3 would at least be comparable to the costs highlighted for Option 2a above. With regard to the costs related to verification, the same considerations made for Options 1 and 2 above would apply.

Impact on SMEs

All options analysed above are intended to cover only companies having more than 500 employees. As a consequence, no administrative burden would be directly imposed on SMEs. Nevertheless, some of the experts consulted by the Commission Services indicated that a detailed reporting requirement could generate indirect costs for SMEs, as these companies may require them to provide specific data (particularly as regards issues related to the supply-chain management) in order to complete their non-financial report. Although none of the proposed broad options would require a specific disclosure on supply-management aspects, potential side-effects should be taken into account when assessing the overall cost of each option.

Policy Option	Large Companies	SMEs
0. No change	0	0
1. Require a disclosure in the Annual Report	€600 to €4300	0
2.a Detailed reporting (mandatory)	€33000 to €604000	Side effects to be estimated
2.b Detailed reporting (report or explain)	€33000 to €604000 for full compliance €600 to €1000 for reasoned explanation	Side effects to be estimated

2.c Detailed reporting (voluntary)	0	0
3. Set up a mandatory EU Standard	Depending on the complexity of the standard, €33000 to €604000 or higher	Side effects to be estimated

2. Boards' diversity

As regards the disclosure of the board diversity policy (the preferred option), it is estimated that the new requirement would only have limited impact in terms of adding new administrative burden. Current EU legislation already imposes to all listed companies to provide a corporate governance statement, which includes information on the composition and operation of management, administrative and supervisory boards. The new requirement would only extend the content of the existing statement by including information on the board diversity policy. As the size of an average board is limited, the amount of information to be collected and prepared would be limited. The main costs would be linked to the drafting of this additional content of the corporate governance statement. Previous estimations made by the Commission's services[209] for the preparation of a similar disclosure requirement would range between 600 and 1000 euros per year per company.

The global costs are more difficult to be quantified. They depend naturally on the scope covered by the measure. As explained below in section 5.4, only large listed companies will be covered. The Commission does not have an exact number of large listed companies in the EU. However, it has been previously estimated by the Commission that the number of large companies using IFRS is around 6100. However, whereas all publicly traded companies are required to adopt IFRS for their consolidated account, unlisted companies can also opt for their use. In addition, not all listed companies produce consolidated accounts. With these reserves, we can however estimate that the number of companies covered would approach 6000. Thus, on the basis of this estimation, the total cost for option 1 could be between 3600000 and 6000000.

Current rules on the corporate governance statement apply to all listed companies, including listed SMEs. However, in order to better respond to the needs of small businesses and to avoid imposing additional administrative and regulatory burden on them, the new requirement would exempt listed SMEs.

[209] See to this effect CRD IV Impact Assessment, Administrative burden for credit institutions and supervisors, http://ec.europa.eu/internal_market/bank/docs/regcapital/CRD4_reform/IA_directive_en.pdf

Annex IX

Definitions

Non-Financial Reporting

Although no universally accepted definition exists, disclosure of non-financial information is commonly referred to as non-financial reporting, ESG (Environmental, Social and Governance) Reporting, or sustainability reporting. Sustainability reporting is a broad term used to describe a company's reporting practices of its economic, environmental and social performance, although there is no single, universally accepted definition for it. The so called GRI (Global Reporting Initiative) Guidelines define sustainability reporting as "the practice of measuring, disclosing and being accountable to internal and external stakeholders for organisational performance towards the goal of sustainable development".

For the purpose of this Impact Assessment, both expressions "disclosure of non-financial information" and "non-financial reporting" are used. However, different companies may use different terminology depending on their history, geographic location, or specific form and format of their reports.

Integrated reporting

No universally accepted framework for integrated reporting exists today. According to the definition given by the International Integrated Reporting Council (IIRC), "*Integrated Reporting brings together material information about an organization's strategy, governance, performance and prospects in a way that reflects the commercial, social and environmental context within which it operates. It provides a clear and concise representation of how an organization demonstrates stewardship and how it creates and sustains value. An Integrated Report should be an organization's primary reporting vehicle*." See http://theiirc.org/wp-content/uploads/2011/09/IR-Discussion-Paper-2011_spreads.pdf

Annex X

Bilateral meetings with stakeholders

1. AFEP - Association Française des Entreprises Privées
2. BASF
3. BDA - Bundesvereinigung der Deutschen Arbeitgeberverbände
4. BusinessEurope
5. CDP – Carbon Disclosure Project
6. Confindustria
7. Confrontations Europe
8. CSR Europe
9. Daimler
10. EABIS – Academy of Business in Society
11. ECCJ – European Coalition for Corporate Justice
12. Enel
13. EACB - European Association of Cooperative Banks
14. ESBG - European Savings Bank Group
15. FEE – Federation of European Accountants
16. GRI – Global Reporting Initiative
17. Hitachi
18. IIRC – International Integrated Reporting Council
19. Institut RSE
20. JBCE – Japanese Business Council in Europe
21. Microsoft
22. Renault
23. Telefonica
24. TI – Transparency International
25. UNPRI – United Nations Principles for Responsible Investment
26. ZDH - Zentralverband des Deutschen Handwerks