

EU directive 2014/95 on reporting of non-financial information – status of transposition into Member States’ legislation



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Background

The following report was written for the university conference CSRCOM 2017 that was held in Vienna 21-23 September 2017. I was happy to edit the table with transposition also I Belgium just a few weeks ago. No only Spain is missing.

Implementation of the EU directive on non-financial reporting

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1. Background

The EU Directive on reporting on non-financial information 2014/95/EU (EU NFI) was adopted by the EU Parliament and the EU Council of Ministers on October 22, 2014, and came into force on December 6, 2014¹.

According to EU rules a directive must be transposed into national legislation not more than 2 years after the date of entry into force, i.e. not later than 6 December 2016. Some member states (MS) could not meet this deadline.

The directive contains changes to the recently adopted Accounting Directive 2013/34/EU.

Research papers published so far mainly deal with implementation issues in individual MS. No study of EU-wide implementation has been published to our knowledge.

2. Research questions

In reviewing the implementation, the following issues have been studied:

1. Have some MS gone beyond the EU minimum?
2. Have MS conducted consultations with stakeholders and have this influenced the outcome?
3. How will the EU NFI directive change the number of reporting companies in the MS?
4. Has the EU NFI directive led to a harmonization of reporting procedures among MS?

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3. Methodology

In order to find information about the implementation the most useful tool is to look at publicly available material on the web sites of parliaments, governments and CSR organisations. In this study, we only look at the final documents that emerge from legislation procedures, being well aware of that governments in earlier stages have proposed various ideas. Apart from web research and email communications, face-to-face interviews has been done with government officials and NGOs in Austria (respACT and Ministry of Justice), Hungary (Követ and Ministry for National Economy), Slovakia (Pontis Foundation) and Sweden (Ministry of Justice, KPMG) and the organizations CSR Europe and GRI. It is too early to discuss the results in qualitative terms as most of the reports will only be available in 2018.

EU NFI directive applies to all 28 MS + the two EEA countries Norway and Iceland, that is 30 countries.

Terminology used

Large companies in EU definition (Directive 2013/34/EU) fulfil at least two of the following three criteria

- More than 250 employees;
- Total balance of at least 20 million €;
- Net turnover of at least 40 million €.

The EU NFI directive mentions in § 14 “those large undertakings having an average number of employees in excess of 500”. There is no change of the balance and net turnover amounts mentioned above.

Public Interest Entities (PIE) are in EU definition (Directive 2014/56/EU) companies that are either listed on the stock exchange, banks, insurance companies or otherwise decided by the government as PIE. The last-mentioned definition can vary between MS. In Slovenia, Sweden and UK only listed companies count as PIE, while Spain, according to a Federation of European Accountants (FEE) report *Definition of Public Interest Entities (PIEs) in Europe* in October 2014, has 8,000 PIEs although Spain has only 150 listed companies. Therefore, in Spain there has been created additional rules to limit the number of PIEs that should apply the EU NFI rules and the three thresholds for PIEs to be included are the same as in the UE NFI directive.ⁱⁱ

4. Main points of the directive

EU NFI directive requires large public-interest companies (PIEs) with more than 500 employees to provide a non-financial statement (§ 14).

The report should contain relevant and material environmental and social information, employee matters, respect for human rights, and anti-corruption and bribery matters (§ 7).

EU NFI directive employs the “report or explain” policy which gives companies the possibility to avoid reporting on certain issues provided that they present an explanation.

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EU NFI directive does not give detailed rules for how a NFI Report should be undertaken. It only lists a number of guidelines that can be used or reporting such as EMAS, UN Global Compact, OECD Guidelines for MNEs, UN Guiding Principles (on Business and Human Rights) Reporting Framework, ISO 26 000, ILO Tripartite Declaration of principles concerning MNEs and the Global Reporting Initiative (§ 9).

EU NFI directive gives companies that are members of groups a possibility to refer to the NFI Report by the mother company (§ 15).

EU NFI directive leaves to MS to decide on whether external verification should be required (§ 16).

EU NFI directive gives governments the option to allow companies not to disclose information related to impending developments, or matters under negotiation (Safe harbour clause) through the new article 29a 1 in the Accounting directive.

The NFI Report should include:

- Short description of the company's business model;
- Description of
 - the company's policies including "implemented due diligence processes";
 - the "outcome of those policies";
 - principle risks related to ESG matters and their management, which are linked to the activity of the company, including its "business relationships, products or services";
- Presentation of the most important "non-financial key performance indicators" (KPIs).

One section of the directive (§§ 18, 19) concerns measures to report on policy of diversity. As this in some countries already is under legislation, it is complicated to analyse the impact of this part of the directive and it is therefore not discussed in this study.

One paragraph (§ 20) deals with country-by-country reporting of taxes companies pay. This issue has been discussed in G20 and OECD and has been handled in other EU directives.

5. EU position

The proposal by the Commission for reporting of non-financial information was launched on 16 April 2013 by the Commissioner for the Internal Market, Mr Michel Barnier. On the same date one year later, on 16 April 2014, the EU Parliament took its decision, but MS through the Council of Ministers did not take its position until summer 2014. As the Council of Ministers arrived at a different view from the Parliament, negotiations between the Parliament and the Council followed.

The main difference between the Commission proposal and the final result is that the Council narrowed down the scope from all large companies with more than 500 employees to companies of public interest (PIE) with more than 500 employees. Thereby the scope of companies in EU was reduced from 16,000 to 6,000 according to the estimates by the commission. This line was taken at a EU Coreper meeting end February 2014 and was maintained throughout the negotiations with the Parliament.

In view of the fact that two EU MS, Denmark and Sweden, increased the scope to all companies with more than 250 employees, the scope in EU can be calculated to be 8,000. The Swedish government bill calculates that the number of Swedish companies concerned according to the EU minimum rules would be around 100, while the number with the proposed threshold of 250 employees would be

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1,600. As the Swedish bill uses the abovementioned criteria for large company (fulfilling more than one of the three criteria) it is reasonable to calculate with up to 2,000 concerned companies (such with few employees but big turnover and assets such as energy companies and real estate companies. In Denmark, it is assumed that 1,100 companies will be subject to mandatory reporting.

According to Article 3 of the EU NFI directive the Commission shall not later than 8 December 2018 submit a report to the EU Parliament and to the Council on the implementation of the directive. EU NFI is now handled by DG FISMA, Unit B.3.

6. Consultations

EU MS are following their normal practice in arranging consultations before transposing a directive. Some countries publish both their questionnaire/proposal and the replies on internet, some only publish summaries.

Some countries (Austria, UK, Germany) present a consultation document with a number of questions to answer, other countries (Sweden) publish a document with facts and opinions and leave to consulting participants to react on what they themselves focus on. We have looked in detail at the consultation process in Austria, Germany, Sweden and UK.

Austria The EU NFI directive is in Austrian terminology NaDiVeG (Nachhaltigkeits- und Diversitätsverbesserungsgesetz). The consultation period was June-August 2015. The consultation document issued by the Ministry of Justice of 7 pages summarized the directive and contained 17 questions. The answers are published on internet. Also other ministries than the Ministry of Justice could send written replies to the consultation document.

Germany The consultation period was March-May 2015. 55 companies and organisations have sent comments. These are all published on the government web site.

Sweden The consultation period was end December 2015-end March 2015. The report (Ds 2014:45) is a 108-page document that includes proposed changes of wordings of six laws. 41 replies were received. In Sweden consultations are not done with individual companies, only their organizations. The answers are available but not published on the web.

UK. The consultation period was February–15 April 2016. The Department of Business, Innovation and Skills (BIS, now BEIS) had compiled a list of 100 companies and organisations that were invited to send in replies. BIS send out a 47-page document with key points and 15 questions to be answered. 76 answers were received.

In UK and Sweden, the different ministries do not send comments to the enquiry, their views are integrated in the consultation proposal.

Some countries (Austria, Italy) did consultations in two rounds in which the second was a consultation based on a detailed proposal from the government.

Several new MS did not arrange consultations and only arranged for a necessary decision by parliament or by government on delegation from parliament.

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7. Implementation

According to EUR-Lex website the following national implementation measures were reported by 2017-08-31.ⁱⁱⁱ

Country	No of measures	Latest measure
Belgium	1	2017-09-03
Bulgaria	2	2016-06-03
Czech Rep.	21	2016-12-30
Denmark	1	2015-06-01
Germany	1	2017-04-18
Estonia	5	2015-12-31
Ireland	1	2017-04-18
Greece	1	2016-07-07
Spain	0	
France	3	2017-08-11
Croatia	3	n.a.
Italy	1	2017-01-10
Cyprus	1	2017-06-02
Latvia	4	2016-12-29
Lithuania	5	2016-12-23
Luxemburg	1	2016-08-04
Hungary	5	n.a.
Malta	1	2016-12-02
Netherlands	4	2017-03-23
Austria	1	2017-01-17
Poland	2	2017-01-11
Portugal	39	2017-07-28
Romania	5	2017-02-27
Slovenia	2	2017-03-31
Slovakia	5	2015-06-11
Finland	3	2016-12-29
Sweden	18	2016
United Kingdom	4	2016

8. Summary and answers to research questions

Summary

EU NFI has been one of the dominant trends in corporate reporting. Other trends, that in some ways complement the EU NFI, in some ways compete as a model, are the projects for integrated reporting (mainly advanced by IIRC) and the projects to introduce sustainability reporting requirements at stock exchanges.

EU NFI has successfully been transposed into legislation in all but a few MS. Thereby a trend towards diverging rules have been stopped and we will have similar NFI reporting within the EU/EEA area. The number of reporting companies will rise even if the increase is not dramatic. In countries where stock exchanges are the main vehicles for pushing companies to report a similar trend is noticed.

EU NFI covers all traditional CSR issues and can therefore be said to favour reporting systems that have ambition to cover all pertinent systems such as GRI, UN Global Compact Report on Progress, while reporting tools for specific areas such as CDP (for carbon emissions), UNGP Reporting Framework must be complemented with other reporting tools.

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Legislation vs. voluntary and self-regulating programs have been a topic for discussion in many MS. EU NFI directive in § 23 therefore states that SMEs should not be targeted as it would increase their regulatory burden.

The "comply or explain" rule is regarded by some as watering out the ambitions. Experiences from Denmark, where this rule was first introduced show according to a study by Copenhagen Business School on the first 3 years of mandatory reporting that the percentage of companies referring to this excuse is rapidly diminishing.

The fact that no MS has mandated external audit can raise doubts about the quality of the reports. The audit firm has only to mention the fact whether a NFI report is published. This has been a subject for discussion in countries where a consultation process has been held. A sizeable minority of stakeholders have argued in favour of mandatory external audit. The argument against mandated external audit is that it should be decided on according to the requirements of the market.

The focus in the discussion varies somewhat among MS. Environmental issues and gender issues are often at the forefront in developed economies. In Eastern Europe, according to interviews conducted, there has been a particular interest in the issue of anti-corruption as that is perceived as a considerable problem in the society.

Answers to research questions

1. Have some MS gone beyond the EU minimum?

Answer: Sweden, Denmark and EEA members Norway and Iceland have gone considerably further than the EU minimum on scope, choosing to apply the legislation to all companies (instead of PIEs) with more than 250 employees (instead of >500 employees).

No MS has demanded external verification of the report.

Some MS have been concerned by the rather long time period (6 months as maximum) stated in the EU NFI (Article 1.4.b) between the publication of the Annual Report and the NFI report. Germany has shortened it to 4 months.

2. Have MS conducted consultation procedures with stakeholders and have this influenced the outcome?

Answer: Several countries have completed 1-2 consultations rounds with stakeholders such as: Germany, Italy, Austria, Sweden, France, UK. This has clarified certain issues in the national drafts but the ultimate decision is by the parliaments and the end result is depending on the position of the various political parties. The consultation process has also engaged a large number of stakeholders. In countries where no consultations have been undertaken the level of awareness is lower.

3. How will the EU NFI change the number of reporting companies in the MS?

Answer: Developed economies that have not exceeded the EU minimum (e.g. Germany, UK) will probably not see any big rise in number of reports as these companies are already producing similar reports. Developed economies that have exceeded EU minimum level will see a large rise (Sweden and Iceland), while Denmark, France and Norway already have a large number of reporting companies due to existing legislation.

As for less developed economies a rise of the number of reporting companies is likely.

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4. *Has the EU NFI Directive led to a harmonization of reporting procedures among MS?*

Answer: EU NFI directive will probably lead to a harmonization of MS reporting procedures. Harmonization means both equalizing the content and lowering the ceiling for the most developed countries and raising the floor for the least developed countries. As the greatest difference in application is the scope (broad ambitions by “Viking countries”) rather than content one can argue that the aim of harmonization has been met.

9. Further research work

After a couple of years, the content and quality of NFI reports can be studied. Two aspects deserve special attention; if the EU NFI has led to more reports and if there has been a (negative) effect to limit reporting by ambitious companies to the legally required minimum only.

ⁱ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095>).

ⁱⁱ <http://www.icac.meh.es/documentos/contabilidad/APL%20Informaci%C3%B3n%20no%20financiera.pdf>

ⁱⁱⁱ <http://eur-lex.europa.eu/legal-content/SV/NIM/?uri=CELEX:32014L0095>