

EU directive 2014/95 on reporting of non-financial information – the German decision



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Background

The EU directive came into force on 6 December 2014 and should therefore be transposed into legislation not later than 6 December 2016. The German parliament should originally have decided on legislation in December but priority was given to an adoption of a national plan on Business and Human Rights. Therefore the decision was postponed to early 2017 and after decisions by the relevant committees on March 8 the plenary debate was scheduled for March 9. The debate took place in the early hours of March 10. The vote in 2nd and 3rd reading was taken at 01.30 today. The coalition of **CDU/CSU** and **SPD** were in majority and their proposal was accepted, while the two opposition parties **Bündnis 90/Die Grünen** and **Die Linke** voted against.

The government proposal was drafted by the Ministry for Justice and Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz*), abbreviated **BMJV**.

1. Main points of the decision

- a. The Decision follows the EU directive which limits the reporting requirement to listed companies with more than 500 employees. According to the government this would concern 300 companies. This is a lower figure than earlier was mentioned (500-700).
- b. No requirement for external audit. This is up to the Board of Directors (*Aufsichtsrat*) to decide on.

2. Procedure

Germany was one of two countries who abstained from voting in the final meeting of Coreper.

The Ministry (BMJV) sent a draft law for consultation on 11 March 2016 and 55 replies have been recorded and are available to read on the BMJV web site. One common point of criticism from the business organizations was that the cost for the reporting was heavily underestimated. The Commission had given the figure 600-4300 € which was considered far too low.

In order to gather sufficient information a hearing was organized by the competent Bundestag Committee on Justice and Consumer Rights on 7 November where a number of comments were made. As several countries compare their position with the German, a short summary of points put forward at the November 7 meeting is of interest.

Germanwatch: All large companies should be mandated to report. Otherwise privately owned companies like Aldi, Lidl and Edeka would not need to report. The bill also is too flexible on what needs to be reported, using the term "die für den Geschäftsverlauf wichtig sind". This leaves an opportunity to avoid reporting on unpleasant facts.

Verband der Chemischen Industri: The voluntary approach has been sufficient. Some requirements are too far reaching. As concerns the supply chain it should be limited to the first tier.

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Institut der Wirtschaftsprüfer: The NFR should be issued at the same time as the annual Report. They argued against the possibility given by the draft to neglect publication of facts from business competition point of view. This would be an invitation to greenwashing.

Die Verinigung zur Mitwirkung and der Entwicklung des Bilanzrechts für Familiengesellschaften: Criticism that the bill does not demand external verification.

Verbraucherzentrale Bundesverband: The threshold for reporting should be lowered from 500 employees to 250.

Otto Group: It is not correct to distinguish listed companies from other companies.

3. Issues in the debate

The government coalition has taken a principal decision that EU directives should be transposed according to the letter, 1:1, as the procedure is called in Germany. The spokesperson for the government coalition was Prof. Heribert Hirte, a CDU parliamentarian from Cologne.

The two opposition parties maintained that this was unfair as several large private owned companies such as ALDI and Lidl would not be covered. The opposition was also critical that the law does not stipulate one specific standard for reporting which would make reports from different companies comparable. They also criticized that the terms “materiality” and “risk” only should be reported if the issues had an economic impact on the company.

The issue of inclusion of consumer protection in the law was debated and the government’s conclusion at the end was that issues like consumer protection and data protection should be decided in other parts of legislation.

There was an agreement that the non-financial report should be delivered not more than 4 months after the Annual Report if it is not part of that report (EU directive stipulates that it should not be more than 6 months after the Annual Report is published). The difference in time has also been debated in other countries. The point is that a lot of things can happen between the two publication dates.

In the debate in the Bundestag the opposition parties Bündnis 90/Die Grünen and Die Linke emphasized the responsibility of companies in the supply chain and for the activities in third world countries. The domestic or inter-EU relations were not topics of discussion.

It could be noted that the Bundestag named this issue **CSR Richtlinie**, as the English term CSR is well known in Germany and more widely used than German translations.

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