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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

(Text with EEA relevance)

{SWD(2013) 127 final}

{SWD(2013) 128 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Accounting Directives¹ (hereafter the "Directives") deal with the preparation of annual and consolidated financial statements and related reports. In particular, Article 46 (1) (b) of the Fourth Directive provides that, where appropriate and to the extent necessary for an understanding of the company's development, performance or position, the annual report shall also contain non-financial information, including information relating to environment and employee matters.

In addition, Article 46a of this Directive sets rules for the content of the corporate governance statement to be prepared by listed companies.

The opportunity to improve the transparency of the social and environmental information provided by companies in all sectors, in order to ensure a level playing field, has been acknowledged by the Commission in the Single Market Act² and was reiterated in the Communication "A renewed strategy 2011 – 2014 for Corporate Social Responsibility"³. This proposal delivers on one of the principal commitments of the renewed strategy.

The Communication defines CSR as "the responsibility of enterprises for their impact on society". It acknowledges that its development should be led by enterprises themselves, and that companies should have a process in place to integrate social and environmental concerns into their business operation and strategy. Non-financial transparency is therefore a key element of any CSR policy.

Enhanced transparency may help companies to better manage non-financial risks and opportunities, and thus improve their non-financial performance. At the same time, non-financial information is used by civil society organisations and local communities to assess the impact and risks related to the operations of a company. Moreover, it allows investors to take better account of sustainability considerations and long term performance.

However, consultations have shown that only a limited number of EU large companies regularly disclose non-financial information, and the quality of the information disclosed varies largely, making it difficult for investors and stakeholders to understand and compare companies' position and performance.

This proposal sets therefore a requirement for certain large companies to disclose relevant non-financial and diversity information, ensuring a level playing field across the EU.

Nevertheless, it takes a flexible and non-intrusive approach. Companies may use existing national or international reporting frameworks and will retain their margin of manoeuvre to define the content of their policies, and flexibility to disclose information in a useful and relevant way. When companies consider that some policy areas are not relevant for them, they will be allowed to explain why this is the case, rather than being forced to produce a policy.

The European Parliament, in its two resolutions on respectively, "Corporate Social Responsibility: accountable, transparent and responsible business behaviour and sustainable

¹ Fourth Council Directive of 25 July 1978 on the annual accounts of certain types of companies (78/660/EEC); Seventh Council Directive of 13 June 1983 on consolidated accounts (83/349/EEC).

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 COM(2011) 681 final of 25 October 2011

growth”⁴ and “Corporate Social Responsibility: promoting society’s interests and a route to sustainable and inclusive recovery”⁵, acknowledged the need to increase transparency in this field and called the Commission to bring forward a legislative proposal.

Against this background, this proposal pursues the following key objectives:

- (1) To increase the transparency of certain companies, and to increase the relevance, consistency, and comparability of the non-financial information currently disclosed, by strengthening and clarifying the existing requirements.
- (2) To increase diversity in the boards of companies through enhanced transparency in order to facilitate an effective oversight of the management and robust governance of the company.
- (3) To increase the company's accountability and performance, and the efficiency of the Single Market

The current approach to the disclosure of non-financial information in the Accounting Directives has not been sufficiently effective. A majority of stakeholders consulted considered that the obligation set by the Accounting Directives lacks clarity and may prejudice legal certainty.

Clearer requirements and stronger focus on topical issues important for the company's long-term success are therefore necessary. Some Member States have developed national legislation that goes beyond the requirements of the Accounting Directives. However, national requirements are significantly diverse, which adds to the lack of clarity for companies and investors who operate across the Internal Market.

Some Member States have privileged "report or explain" models, where companies can choose between the actual reporting, or, alternatively, disclosing the reasons for not doing so. Others establish an outright legal requirement, which may be quite prescriptive. Some Member States target large companies, while others focus on certain listed companies or government-owned companies only. Some Member States refer to international guidelines (although often different ones), while others are developing their own national reporting guidelines. This varied pattern has led to a fragmentation of the legislative frameworks across the EU. That is why this proposal aims at ensuring a level playing field, at limiting costs for enterprises operating in more than one Member State, and ensuring easier and more widespread investors’ access to key, useful information

In addition, insufficient diversity in the boards may lead to a similarity of views of the members of the board of directors (the so-called phenomenon of "group think") and more resistance to innovative ideas. This can lead to a negative impact on the challenge and oversight of the management by the board of directors and therefore on the performance of companies. Enhanced transparency on diversity policies could also make a considerable contribution to the promotion of equal treatment and to the fight against any discrimination in decision-making bodies of the companies concerned and beyond. Discrimination on grounds of religion or belief, disability, age or sexual orientation as regards employment or occupation

⁴ Report on corporate social responsibility: accountable, transparent and responsible business behaviour and sustainable growth (2012/2098(INI)); Committee on Legal Affairs. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2013-0017+0+DOC+PDF+V0//EN&language=EN>

⁵ Report on Corporate Social Responsibility: promoting society’s interests and a route to sustainable and inclusive recovery (2012/2097(INI)); Committee on Employment and Social Affairs. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2013-0023+0+DOC+PDF+V0//EN&language=EN>

is prohibited by Directive 2000/78/EC. Discrimination on grounds of sex is prohibited in employment and occupation according to Directive 2006/54/EC. Discrimination on grounds of racial or ethnic origin in employment is prohibited by Directive 2000/43/EC.

The identified problems may affect the overall performance of companies, their accountability, the ability of investors to assess and factor appropriately and timely all relevant information, and the efficiency of the EU financial markets. As a consequence, the Single Market potential for sustainable growth and employment may not always be fully exploited.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation of stakeholders and interested parties

The Commission services have maintained regular and wide dialogues with stakeholders throughout the procedure leading to this proposal for amendment. The objective was to gather views from all interested parties, including preparers, users, non-governmental organisations, etc. The dialogue took place through:

- Two public consultations, respectively on "Disclosure of non-Financial information by companies" and on the "EU corporate governance framework. On non-financial information, an overall majority of stakeholders supported the need to improve the current legislative framework, as this could be beneficial for both preparers and users of information. On diversity most of the respondents to the consultation on the "EU Corporate Governance Framework" showed a clear support for the disclosure of companies' diversity policies. They considered that enhanced transparency would enable investors to make more informed decisions and would help reducing the phenomenon of "group think".
- An ad hoc Experts' group composed of 16 members with diverse experience and background, and
- Several meetings with stakeholders and Member States' representatives

Impact assessment

The impact assessment undertaken by the Commission services identified two main issues concerning (1) the inadequate transparency of non-financial information and (2) the lack of diversity in the boards of directors.

Inadequate Transparency of Non-Financial Information

Certain companies have failed to adequately meet growing demand from stakeholders (including investors, shareholders, employees and civil society organisations) for non-financial transparency. Specific issues have been highlighted with regard to both quantity and quality of information.

- **Quantity of information:** it is estimated that only ~ 2500 out of the total ~ 42000 EU large companies formally disclose non-financial information on a yearly basis
- **Quality of information:** overall the information disclosed by companies does not adequately meet the needs of users.

The analysis carried out by the Commission services has identified both a market and regulatory failure as underlying causes of the problem. First, market incentives appear insufficient or uneven. Despite the increase in demand for non-financial information, the benefits related to non-financial disclosure are perceived by some stakeholders as long-term

and difficult to quantify in a precise manner, while short-term costs are more apparent and easily measurable. Some companies, although conceptually acknowledging the benefits of non-financial reporting, may be less inclined to actively pursue policies in this field due to this perception.

Second, the regulatory responses, both at EU and at Member States' level, have not been effective enough in addressing this problem.

A number of options have been considered to improve the current situation, including strengthening the existing requirement, introducing new requirements for detailed reporting, or setting up an EU Standard. In light of the assessment of these policy options, it appeared that the preferred option would be strengthening the existing obligation, by requiring a non-financial statement within the Annual Report.

Insufficient board diversity

Company boards with members who have a similar educational and professional background, geographical origin, age or gender may be dominated by a narrow "group think". This can contribute to the failure of an effective challenge of the management decisions, as the lack of diverse views, values, and competences may lead to less debate, ideas and challenge in the boardroom. It can also lead to a harder acceptance of innovative ideas proposed by the management. The insufficient board diversity is linked above all to insufficient market incentives for companies to change the situation. In this respect, inadequate recruitment practices for board members drawing often on a too narrow pool of people contribute to perpetuating the selection of members with similar profiles. Another element reinforcing the problem is the inadequate transparency on board diversity, as the level of information and the extent to which this information is available to the public at large is often insufficient.

This insufficient board diversity and lack of transparency can therefore result in companies that are less well managed, less inclusive and less innovative, so they contribute less to growth. In the light of the EU 2020 objectives of inclusive and sustainable growth the Commission has therefore considered a number of options to address these problems. In the light of the assessment of these policy options, it appeared that the most appropriate option at this stage would be the *disclosure of diversity policy*. It is also the option that is preferred by most stakeholders compared to other options such as a compulsory diversity policy or to an action focusing only on recruitment policy.

Complementary to these provisions, the Commission has already proposed on 14 November 2012 legislation with the aim of attaining a 40% objective of the under-represented gender in non-executive board-member positions in publicly listed companies, with the exception of small and medium enterprises.⁶

3. LEGAL ELEMENTS OF THE PROPOSAL

Proposed amendment of the Directives

The proposal takes the form of an amendment to Article 46 of the Fourth Directive and to Article 36 of the Seventh Directive dealing with disclosure of non-financial information. Concerning the new requirement on diversity in the boards, it is proposed to amend Article 46a of the Fourth Directive.

⁶ Proposal for a Directive of the European parliament and the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures, COM(2012) 614 final.

The Accounting Directives regulate the information provided in the financial statements of all limited liability companies which are incorporated under the law of a Member State or European Economic Area (EEA). As Article 4(5) of the Transparency Directive refers to Article 46 of the Fourth Directive and to Article 36 of the Seventh Directive, the amendments proposed to these provisions will also cover companies listed on EU regulated markets even if they are registered in a third country.

Legal basis, subsidiarity and proportionality

The proposal is based on Article 50(1) of the Treaty, which is the legal basis for adopting EU measures aimed at achieving an Internal Market in company law. The proposal provides that large companies should disclose non-financial information under a set of requirements devised to increasing transparency with the objective of strengthening the company's transparency and accountability, while limiting any undue administrative burden.

According to the principle of subsidiarity the EU should act only where it can provide better results than intervention at Member State level and action should be limited to what is necessary and proportionate in order to attain the objectives of the policy pursued. Several Member States have recently adopted legislation requiring additional disclosure in this field. However, national requirements appear significantly diverse, leading to difficulties to benchmark companies across the Internal Market. The objectives of this amendment are such that they cannot be fulfilled by unilateral action at the level of the Member States.

Further transparency should not translate into undue administrative burden. Smaller companies face more difficulties to collect and analyse information. According to the "think-small-first" principle, the disclosure requirements under this Directive should not apply to companies whose size is below a defined threshold.

As far as large companies are concerned, disclosure of non-financial information needs to be made more available, useful, and consistent at EU level, as the activities of these companies are often EU-wide and relevant to investors and other stakeholders throughout the internal market. Nevertheless, over and above a harmonised requirement of consistent information common across the Single Market, Member States should have a degree of flexibility as far as additional reporting requirements are concerned. To this end, an amendment to the Accounting Directives is the most appropriate legal instrument as it allows a certain flexibility for Member States. Amending the Directives also ensures that the content and form of the proposed EU action does not go beyond what is necessary and proportionate in order to achieve the regulatory objective.

Detailed Explanation of the Proposal

Non-financial information

The current obligation set by Art 46 (1) (b) provides that large companies disclose non-financial information, including relating to environmental and employee matters. This measure is designed to deliver significant benefits for companies, investors and other stakeholders operating in the Single Market, and, therefore, contribute to inclusive and sustainable long-term growth and employment.

Article 1 (a) of the proposal will require certain large companies to disclose a statement in their Annual Report including material information relating to at least environmental, social, and employee-related matters, respect of human rights, anti-corruption and bribery aspects. Within these areas, the statement will include (i) a description of its policies, (ii) results and (iii) risk-related aspects.

In providing this information, without prejudice to possible more ambitious requirements set at Member States level, the company may rely on national, EU-based or international frameworks, such as the UN Global Compact, the Guiding Principles on Business and Human Rights implementing the UN “Protect, Respect and Remedy” Framework, the OECD Guidelines for Multinational Enterprises, ISO 26000, the ILO Tripartite Declaration of principles concerning multinational enterprises and social policy, and the Global Reporting Initiative, and disclose which framework they have relied upon. A company that does not apply a specific policy in one or more of these areas will be required to explain why this is the case.

As such, the measure targets business-relevant information, useful for decision-making purposes within the company as well as for investors and other stakeholders. The measure allows for significant flexibility and avoids unnecessary administrative burden on companies, in particular on the smallest ones, which are not subject to new disclosure requirements. Costs associated with the required disclosures for large companies are commensurate to the value and usefulness of the information and the size, impact and complexity of the undertakings.

In particular, as specified in Article 1 (a), the obligation will only apply to those companies whose average number of employees exceeds 500, and exceeds either a balance sheet total of 20 million euros or a net turnover of 40 million euros. This threshold, higher than the one currently applied within the Accounting Directives (i.e.: 250 employees) is balanced since it limits any undue administrative burden and ensures an appropriate scope of the non-financial reporting obligations. It is estimated that, on this basis, the new requirement would cover around 18.000 companies in the EU.

Moreover, as specified in Article 1 (b), those companies that prepare a report corresponding to the same financial year shall be exempted from the obligation to provide the non-financial statement, provided that the report: (i) covers the same topics and content required by Article 1 (a), (ii) relies on national, EU-based or international frameworks, and (iii) is annexed to the Annual Report.

Finally, Article 1 (c) will exempt subsidiaries companies from the obligation set out by paragraph 1 (a), provided that the exempted company and its subsidiaries are consolidated in annual report of another company, and that consolidated annual report fulfils the requirements set out under Article 1 (a).

Diversity

The new paragraph 1(g) will require large listed companies to provide information on their diversity policy, including aspects concerning age, gender, geographical diversity, and educational and professional background. The information will be included in the corporate governance statement and will have to contain the objectives of such a policy, its implementation and the results obtained. Companies not having a diversity policy will only be obliged to explain why this is the case.

4. BUDGETARY IMPLICATION

The proposal has no implications for the Community budget.

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50 (1) thereof,
Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national Parliaments,
Having regard to the opinion of the European Economic and Social Committee⁷,
Having regard to the opinion of the Committee of the Regions⁸,
Acting in accordance with the ordinary legislative procedure,
Whereas:

- (1) In its Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions entitled 'Single Market Act Twelve levers to boost growth and strengthen confidence "Working together to create new growth"',⁹ adopted on 13 April 2011, the Commission identifies the need to improve the transparency of the social and environmental information provided by companies in all sectors, in order to ensure a level playing field.
- (2) The necessity to improve company disclosure of social and environmental information, by presenting a legislative proposal in this field, was reiterated in the Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions entitled "A renewed EU strategy 2011-14 for Corporate Social Responsibility"¹⁰ adopted on 25 October 2011.
- (3) The European Parliament has, in its resolutions of 6 February 2013 on, respectively, "Corporate Social Responsibility: accountable, transparent and responsible business behaviour and sustainable growth"¹¹ and "Corporate Social Responsibility: promoting

⁷ OJ C , , p. .

⁸ OJ C , , p. .

⁹ COM(2011) 206 final of 13 April 2011.

¹⁰ COM(2011) 681 final of 25 October 2011.

¹¹ Report on corporate social responsibility: accountable, transparent and responsible business behaviour and sustainable growth (2012/2098(INI)); Committee on Legal Affairs.
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2013-0017+0+DOC+PDF+V0//EN&language=EN>

society's interests and a tour to sustainable and inclusive recovery"¹², acknowledged the importance of businesses divulging information on sustainability such as social and environmental factors, with a view to identifying sustainability risks and increasing investor and consumer trust, and called the Commission to bring forward a proposal on non-financial disclosure by companies.

- (4) The coordination of national provisions concerning the disclosure of non-financial information in respect of large undertakings with limited liability is of importance for the interests of companies, shareholders and other stakeholders alike. Coordination is necessary in those fields because most of these undertakings operate in more than one Member State.
- (5) It is also necessary to establish a certain minimum legal requirement as regards the extent of the information that should be made available to the public by undertakings across the Union. Annual reports should give a fair and comprehensive view of an undertaking's policies, results, and risks.
- (6) In order to enhance consistency and comparability of non-financial information disclosed throughout the Union, companies should be required to include in their annual report a non-financial statement containing information relating to at least environmental matters, social and employee-related matters, respect for human rights, anti-corruption and bribery matters. Such statement should include a description of the policies, results, and the risks related to those matters.
- (7) In providing this information, companies may rely on national frameworks, EU-based frameworks such as the Eco-Management and Audit Scheme (EMAS), and international frameworks such as the United Nations (UN) Global Compact, the Guiding Principles on Business and Human Rights implementing the UN "Protect, Respect and Remedy" Framework, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, the International Organisation for Standardisation (ISO) 26000, the International Labour Organization (ILO) Tripartite Declaration of principles concerning multinational enterprises and social policy, and the Global Reporting Initiative.
- (8) Paragraph 47 of the final declaration of the United Nations Rio +20 conference, "The Future We Want"¹³, recognises the importance of corporate sustainability reporting and encourages companies, where appropriate, to consider integrating sustainability information into their reporting cycle. It also encourages industry, interested governments and relevant stakeholders with the support of the United Nations system, as appropriate, to develop models for best practice and facilitate action for the integration of financial and non-financial information, taking into account experiences from already existing frameworks.
- (9) Investors' access to non-financial information is a step towards reaching the milestone of having in place by 2020 market and policy incentives rewarding business investments in efficiency under the Roadmap to a Resource Efficient Europe¹⁴.

¹² Report on Corporate Social Responsibility: promoting society's interests and a route to sustainable and inclusive recovery (2012/2097(INI)); Committee on Employment and Social Affairs. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2013-0023+0+DOC+PDF+V0//EN&language=EN>

¹³ United Nations, "The Future We Want", Outcome Document of the United Nations Conference on Sustainable Development RIO+20, A/CONF.216/L.1

¹⁴ COM(2011) 571 final of 20 September 2011

- (10) The European Council of 24 and 25 March 2011 called for the overall regulatory burden, in particular for small and medium-sized enterprises ("SMEs"), to be reduced at both European and national levels and suggested measures to increase productivity while the Europe 2020 Strategy for smart, sustainable and inclusive growth aims to improve the business environment for SMEs and to promote their internationalisation. Thus, according to the "think-small-first" principle, the disclosure requirements under Directive 78/660/EEC and Directive 83/349/EEC should only apply to certain large undertakings and groups.
- (11) The scope of these non-financial disclosure requirements should be defined by reference to the average number of employees, total assets and turnover. SMEs should be exempted from additional requirements, and the obligation to disclose a non-financial statement in the annual report should only apply to those companies whose average number of employees exceeds 500, and exceed either a balance sheet total of EUR 20 million or a net turnover of EUR 40 million.
- (12) Some of the companies and groups falling under the scope of Directive 78/660/EEC and Directive 83/349/EEC already prepare non-financial reports on a voluntary basis. Those companies should not be subject to the obligation to provide a non-financial statement in the annual report, provided that the report corresponds to the same financial year, covers at least the same content required by this Directive, and is annexed to the annual report.
- (13) Many of the undertakings which fall under the scope of Directive 78/660/EEC are members of groups of undertakings. Consolidated annual reports should be drawn up so that the information concerning such groups of undertakings may be conveyed to members and third parties. National law governing consolidated annual reports should therefore be coordinated in order to achieve the objectives of comparability and consistency of the information which undertakings should publish within the Union.
- (14) As required by Article 51a (e) of Directive 78/660/EEC, the report of the statutory auditors should also contain an opinion concerning the consistency or otherwise of the annual report, including non-financial information contained in the annual report, with the annual accounts for the same financial year.
- (15) Diversity of competences and views of the members of administrative, management and supervisory bodies of companies facilitates a good understanding of the business organisation and affairs. It enables members of these bodies to exercise a constructive challenge of the management decisions and to be more open to innovative ideas, addressing the similarity of views of members, the "group-think" phenomenon. It contributes thus to effective oversight of the management and a successful governance of the company. It would therefore be important to enhance transparency regarding the diversity policy companies have in place. This would inform the market of corporate governance practices and thus put indirect pressure on companies to have more diversified boards.
- (16) The obligation to disclose their diversity policies for their administrative, management and supervisory bodies with regard to aspects such as age, gender, geographical diversity, educational and professional background should only apply to large listed companies. Therefore small and medium-sized companies that may be exempted from certain accounting obligations under article 27 of Directive 78/660/EEC should not be covered to by this obligation. Disclosure of the diversity policy should be part of the corporate governance statement, as laid down by Article 46a of Directive 78/660/EEC.

Companies not having a such a diversity policy should not be obliged to put one in place, but they should clearly explain why this is the case.

- (17) Since the objective of this Directive, namely to increase the relevance, consistency and comparability of information disclosed by companies across the Union, cannot be sufficiently achieved by the Member States, and can therefore by reason of its effect be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve the pursued objective.
- (18) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including the freedom to conduct a business, respect for private life and the protection of personal data. This Directive has to be implemented in accordance with these rights and principles.
- (19) Directives 78/660/EEC and 83/349/EEC should therefore be amended accordingly,
- HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 78/660/EEC

Directive 78/660/EEC is amended as follows:

- (1) Article 46 is amended as follows:
- (a) Paragraph 1 is replaced by the following:
- '1. (a) The annual report shall include a fair review of the development and performance of the company's business and of its position, together with a description of the principal risks and uncertainties that it faces.
- The review shall be a balanced and comprehensive analysis of the development and performance of the company's business and of its position, consistent with the size and complexity of the business.
- (b) For companies whose average number of employees during the financial year exceeds 500 and, on their balance sheet dates, exceed either a balance sheet total of EUR 20 million or a net turnover of EUR 40 million, the review shall also include a non-financial statement containing information relating to at least environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including:
- (i) a description of the policy pursued by the company in relation to these matters;
- (ii) the results of these policies;
- (iii) the risks related to these matters and how the company manages those risks.
- Where a company does not pursue policies in relation to one or more of these matters, it shall provide an explanation for not doing so.

In providing such information the company may rely on national, EU-based or international frameworks and, if so, shall specify which frameworks it has relied upon.

(c) To the extent necessary for an understanding of the company's development, performance or position, the analysis shall include both financial and non-financial key performance indicators relevant to the particular business.

(d) In providing its analysis, the annual report shall, where appropriate, include references to and additional explanations of amounts reported in the annual accounts.'

(b) Paragraph 4 is replaced by the following:

'4. Where a company prepares a comprehensive report corresponding to the same financial year relying on national, EU-based or international frameworks and which covers the information provided for in paragraph 1(b), it shall be exempt from the obligation to prepare the non-financial statement set out in paragraph 1(b), provided that such report is part of the annual report.'

(c) The following paragraph 5 is added:

'5. A company which is a subsidiary company shall be exempt from the obligations set out in paragraph 1(b), if the company and its subsidiaries are consolidated in the financial statements and annual report of another company and that consolidated annual report is drawn up in accordance with Article 36(1) of Directive 83/349/EEC.'

(2) Article 46a is amended as follows:

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

'(g) a description of the company's diversity policy for its administrative, management and supervisory bodies with regard to aspects such as age, gender, geographical diversity, educational and professional background, the objectives of this diversity policy, how it has been implemented and the results in the reporting period. If the company has no such policy, the statement shall contain a clear and reasoned explanation as to why this is the case. '

(b) The following paragraph 4 is added:

'4. Point (g) of paragraph 1 does not apply to companies within the meaning of Article 27. '

(3) Article 53a is replaced by the following:

'Article 53a

Member States shall not make available the exemptions set out in Article 1a, 11, Article 27, points (7a) and (7b) of Article 43(1), Article 46(3), Article 47 and Article 51 of this Directive in the case of companies whose securities are admitted to trading on a regulated market within the meaning of point (14) of Article 4(1) of Directive 2004/39/EC.'

Article 2

Amendments to Directive 83/349/EEC

Directive 83/349/EEC is amended as follows:

(1) Article 36 is amended as follows:

(a) Paragraph 1 is replaced by the following:

'1. The consolidated annual report shall include 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 analyse in a balanced manner the development and performance of the business and the position of the undertakings included in the consolidation taken as a whole, consistent with the size and complexity of the business.

For parent undertakings of undertakings to be consolidated that together exceed an average number of 500 employees during the financial year, and, on their balance sheet dates, exceed either a balance sheet total of EUR 20 million or a net turnover of EUR 40 million, the review shall also include a non-financial statement containing information relating to at least environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including the following:

- (i) a description of the policy pursued by the company in relation to these matters;
- (ii) the results of these policies;
- (iii) the risks related to these matters and how the company manages those risks.

Where the undertakings included in the consolidation taken as a whole do not pursue policies in relation to one or more of these matters, the company shall provide an explanation for not doing so.

In providing such information the consolidated annual report may rely on national, EU-based or international frameworks and if so, shall specify which frameworks it has relied upon.

To the extent necessary for an understanding of such development, performance or position, the analysis shall include both financial and non-financial key performance indicators relevant to the particular business.

In providing its analysis, the consolidated annual report shall, where appropriate, provide references to and additional explanations of amounts reported in the consolidated accounts. '

(b) The following paragraphs 4 and 5 are added:

'4. Where a parent undertaking prepares a comprehensive report corresponding to the same financial year, referring to the whole group of consolidated undertakings, relying on national, EU-based or international frameworks and covering the information provided for in the third subparagraph of paragraph 1, the parent undertaking shall be exempt from the obligation to prepare the non-financial statement set out in the third subparagraph of paragraph 1, provided that such comprehensive report is part of the consolidated annual report.

5. A parent undertaking which is also a subsidiary undertaking shall be exempt from the obligations set out in the third subparagraph of paragraph 1, if the

exempted undertaking and its subsidiaries are consolidated in the financial statements and annual report of another undertaking, and that consolidated annual report is drawn up in accordance with the third subparagraph of paragraph 1. '

Article 3

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [...] ¹⁵ at the latest. They shall forthwith communicate to the Commission the text of those provisions.

Member States may provide that the provisions referred to in the first subparagraph shall first apply to undertakings governed by the law of a Member State whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments for the financial year starting on 1 January 201₁ ¹⁶, and to all other undertakings within the scope of Articles 1 and 2 for the financial year starting on 1 January 201₁ ¹⁷

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 4

Entry into force

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

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President

¹⁵ Two years after entry into force

¹⁶ First year after the transposition deadline

¹⁷ Second year after the transposition deadline