Council of the
European Union

Brussels, 6 May 2021
(OR. en)

8516/21

Interinstitutional File:
2021/0199(COD)

DRS 20
COMPET 327
EF 157
ECOFIN 412
ENV 283
SUSTDEV 57

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	21 April 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 199 final
Subject:	REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE on the review clauses in Directives 2013/34/EU, 2014/95/EU, and 2013/50/EU

Delegations will find attached document COM(2021) 199 final.

Encl.: COM(2021) 199 final

Brussels, 21.4.2021
COM(2021) 199 final

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

on the review clauses in Directives 2013/34/EU, 2014/95/EU, and 2013/50/EU

{SWD(2021) 81 final}

Foreword

This report examines the review clauses contained in different pieces of EU legislation on the mandatory disclosure of companies' financial or non-financial information to the public.

In particular, it examines the following review clauses:

- Directive 2013/34/EU ([1]) (the Accounting Directive):
    - Article 36(9) – Financial reporting regime for micro-companies;
    - Article 3(13) – Effect of inflation on SME size criteria;
    - Article 48 – Report on payments to governments by extractive or logging industries;
- Directive 2014/95/EU ([2]) (the Non-Financial Reporting Directive, amending the Accounting Directive):
    - Article 3 – Non-financial reporting by certain public-interest entities;
- Directive 2013/50/EU ([3]) (amending the Transparency Directive):
    - Article 5 – Disclosure requirements for issuers with securities listed on EU regulated markets.

Where appropriate, findings of the Commission's fitness check (evaluation) of legislation regulating companies' periodic public reporting on financial and non-financial information were considered. The staff working document resulting from this fitness check accompanies this report ([4]).

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[1] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, OJ L 182, 29.6.2013, p. 19.

[2] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, OJ L 330, 15.11.2014, p. 1.

[3] Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC, OJ L 294, 6.11.2013, p. 13.

[4] This report is not a summary of the staff working document on the fitness check.

Reporting regime for micro-companies

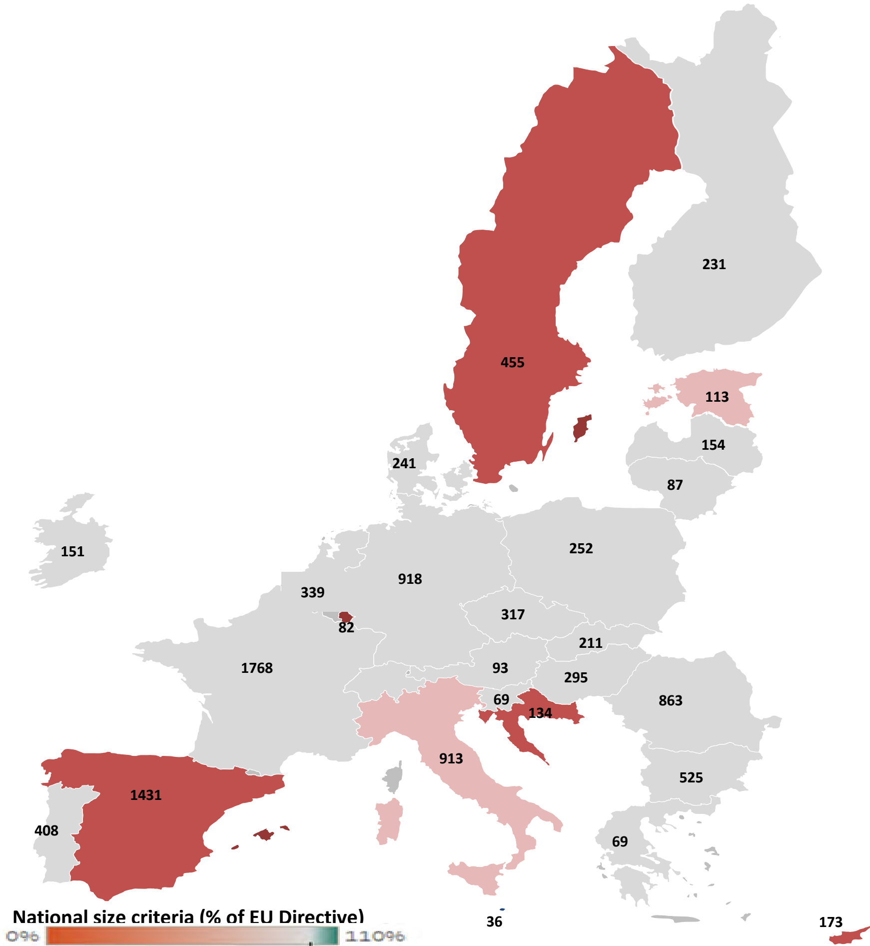
Review clause: Directive 2013/34/EU (the Accounting Directive) – Article 36(9)

Introduced in 2012, the specific reporting regime for micro-companies permits significant simplification of reporting, on the basis of an EU definition of micro-companies and several options offered to the Member States. The implementing Member States generally took advantage of the subsequent revision of the Accounting Directive in 2013 to implement the simplification from financial year 2016 onwards.

Number of micro-companies

In 2016, there were 13.5 million companies with limited liability falling within the scope of the Accounting Directive in the EU-27. Among these, 11.1 million (82%) were micro-companies, based on the Directive's size criteria. Figure 1 shows the number of micro-companies per Member State.

Figure 1 – Number of micro-companies in the EU in 2016 ('000)



Source: CEPS based on Orbis Europe - 2016

Note: The map shows the number of micro-companies in each Member State, based on the application of the size criteria within the Accounting Directive. The colour code indicates where national size criteria diverge from EU law, as a proportion of the Accounting Directive size criteria. Light grey means there is no effect.

Six Member States (Cyprus, Spain, Croatia, Luxemburg, Malta and Sweden) do not recognise micro-companies specifically for corporate reporting. Of the 21 Member States recognising micro-companies for a super-simplified micro-regime, 20 faithfully apply the Directive's size criteria. Two Member States (Estonia and Italy) use lower size criteria than the Directive. As a result, 8.6 million companies are recognised as micro-companies in the EU, i.e. 78% of the total number of micro-companies recognised by the Directive.

Simplification and reduction of administrative costs

Micro-companies have seen their respective reporting regimes simplified to a varying degree, depending on the law in each Member State. In the worst case scenarios (no categorisation of micro-companies, little simplification), a micro-company must comply with the reporting regime applicable to small companies ([5]).

EU law allows Member States to simplify the regime for small companies, tailoring it to the companies' needs in a number of ways. If so, micro-companies may choose one or more of the following options:

- to draw up a super-abridged balance sheet and profit and loss accounts;
- to reduce information in the notes to virtually nothing;
- to have no management report;
- to have no audit;
- to have a specific publication regime (one-stop shop system, balance sheet only);
- to not calculate and recognise year-end accruals.

The 22 Member States recognising micro-companies have used these options to a varying degree. The Centre for European Policy Studies (CEPS) estimates that 13 Member States have implemented a fairly simple regime (62% of eligible companies) and 9 Member States offer only limited simplification (38%) ([6]).

The most popular features of a micro-regime are fewer notes and the simplified layouts for the balance sheet and profit and loss accounts. Five Member States offer one-stop shop solutions (e.g. filing tax returns only once). Only 2 Member States exempt micro-companies from recognising year-end accruals.

Most micro-companies seem not to be aware of the existence of the super simplified regime, or if aware, do not put it into practice out of inertia. Accountants([7]) may not have played their role in raising awareness and/or putting simplification in motion and this resulted in micro-

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[5] The 'small regime' is less onerous than the reporting regime applicable to larger companies or public-interest entities. This is because it limits the information to be provided in the notes to the required financial statements, and waives the management report and audit requirements.

[6] See the 'burden relief index' for each Member State, *Study on the accounting regime of limited micro companies* – CEPS – May 2019, p. 38.

[7] Of the micro-companies surveyed by CEPS, 72% use an external accountant.

companies' not reaping the full benefits of simplification such as a significant reduction of external accountants' fees ([8]).

On this basis, it is estimated that, for the 8.6 million micro-companies affected, the current recurring cost savings amount to EUR 79 million a year ([9]) after one-off initial costs of EUR 20 million ([10]).

If all the Member States fully simplified reporting, and all companies were fully aware of this, the estimated cost savings for 11.1 million micro-companies could reach EUR 1 020 million annually ([11]) after EUR 255 million initial one-off costs ([12]).

Conclusion

Since 2013, the Accounting Directive has, to a great extent, been protecting micro-companies from being overburdened. This is because they cannot be required to report more than small companies. Nowadays, 78% of micro-companies are recognised as such in the EU. This means that they benefit from an even more simplified reporting regime. This has been made possible by a majority of Member States' availing of the simplification opportunities the Directive offers. The degree of simplification can vary greatly depending on each Member State. This partly explains why cost savings have reached only a fraction of their full potential. For the rest, it appears that companies themselves are not aware of or resist changes. This weakens the impact of simplification. The Commission urges Member State that have not done so already to fully recognise all EU micro-companies as such, to simplify their reporting regime as much as possible and to raise awareness of the opportunities for doing so.

[8] Source: CEPS.

[9] Current ongoing burden reduction per year: 8.6 million micro-companies (national size criteria and implemented regime) * 20% self-reporting and aware of super-simplified regime * 50% apply super-simplified regime * *6.0 hours saved* * EUR 15.28 average hourly earnings = EUR 79 million. Commission services calculations derived from CEPS data.

[10] Current one-off costs: 8.6 million micro-companies (national size criteria and implemented regime) * 20 % self-reporting and aware of super-simplified regime * 50% apply super-simplified regime * *1.5 hours saved* * EUR 15.28 average hourly earnings = EUR 20 million. Commission calculations derived from CEPS data.

[11] Potential ongoing burden reduction per year: 11.1 million micro-companies (Accounting Directive size criteria) * *6.0 hours saved* * EUR 15.28 average hourly earnings = EUR 1 020 million.

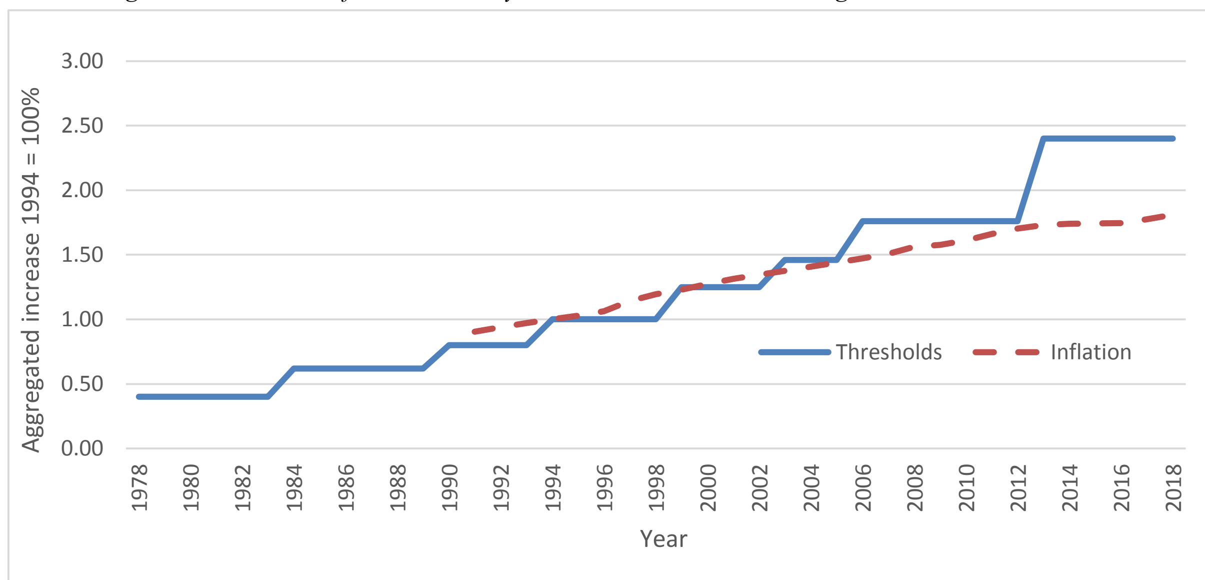
[12] Potential one-off costs: 11.1 million-micro companies (Accounting Directive size criteria) * *1.5 hours saved* * EUR 15.28 average hourly earnings = EUR 255 million.

Adjusting SME size criteria for inflation

Review clause: Directive 2013/34/EU (the Accounting Directive) – Article 3(13)

Size criteria in the Accounting Directive have been revised regularly since the Directive was first adopted in 1978. The revisions have reflected inflation over the years, and sometimes gone beyond that. The figure below summarises how the situation has developed:

Figure 2 – Evolution of SME monetary size-criteria in the Accounting Directive



Source: European Commission – point of reference: small size criteria (turnover / total balance sheet) - base 1,00 in 1994

In 2013, an obligation was introduced in the Accounting Directive ([13]) for the Commission to review and, where appropriate, amend the size criteria, by defining categories of companies (micro-, small, medium-sized, large) at least every 5 years to account for the effects of inflation (in delegated acts). In doing so, EU legislation aims to maintain the status quo, i.e. to avoid a situation in which, due to inflation, micro- and small companies in particular are unwittingly made subject to the more demanding accounting regimes applicable to larger companies.

Geographical area

The Directive denominates the company size criteria in euro. The **euro area** (Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Slovenia and Spain) accounts for 74% of EU companies ([14]).

As regards Member States **outside the euro area** (Bulgaria, Croatia, Czechia, Denmark, Hungary, Poland, Romania and Sweden), these would have to adjust national company size

[13] Article 3(13).

[14] Source: CEPS/Commission. Latvia joined the euro area in 2014 and Lithuania in 2015. This survey uses Eurostat data on the euro area comprising these countries. No specific restatements were made.

criteria depending on the exchange rates of their respective currencies when transposing into national law the Directive criteria expressed in euro.

As regards countries that belong to the European Economic Area (Norway, Iceland and Liechtenstein), these would normally also have to consider adjusting their national company size criteria.

Inflation

Over a period of 7 years from 1 January 2013 to 31 December 2019, cumulated inflation reached 6.4% in the euro area and 7.5% for the EU27 ([15]).

Adjusting size criteria

Size criteria adjusted by 6.4% to account for inflation would be as follows (before rounding up):

Figure 3 – SME threshold in the Accounting Directive, current and adjusted for 6.4% inflation

		Balance sheet	Turnover
Micro			
	Current	350.000 €	700.000 €
	Adjusted	372.400 €	744.800 €
Small (lower end)			
	Current	4.000.000 €	8.000.000 €
	Adjusted	4.256.000 €	8.512.000 €
Small (higher end)			
	Current	6.000.000 €	12.000.000 €
	Adjusted	6.384.000 €	12.768.000 €
Medium / Large			
	Current	20.000.000 €	40.000.000 €
	Adjusted	21.280.000 €	42.560.000 €

Source: European Commission

At this stage, rounding seems necessary to ensure workable, simple and meaningful size criteria for companies. Rounding should maintain the multiplying factor of 2 introduced by the legislator on turnover versus the total balance sheet. Rounding up should be adapted for each size criterion to ensure meaningful results, in order to faithfully reflect inflation with significant rounding up.

It is suggested the following rules for rounding be applied: (i) micro size criteria, to the next 25 000, (ii) small, to the next 100 000, (iii) medium/large, to the next 500 000.

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[15] Source: Eurostat, all items, HICP - 2015 base 100.

The table below shows how inflation adjustment as at December 2019 could result in rounded size criteria, showing absolute values and percentage increase in current size criteria:

Figure 4 – SME threshold in the Accounting Directive, current vs adjusted for 6.4% inflation and rounding up

		Balance sheet	Turnover
Micro			
	Current	350.000 €	700.000 €
	Adjusted rounded	375.000 €	750.000 €
	Resulting %	*7.1%*	*7.1%*
Small (lower end)			
	Current	4.000.000 €	8.000.000 €
	Adjusted rounded	4.300.000 €	8.600.000 €
	Resulting %	*7.5%*	*7.5%*
Small (higher end)			
	Current	6.000.000 €	12.000.000 €
	Adjusted rounded	6.400.000 €	12.800.000 €
	Resulting %	*6.7%*	*6.7%*
Medium/Large			
	Current	20.000.000 €	40.000.000 €
	Adjusted rounded	21.500.000 €	43.000.000 €
	Resulting %	*7.5%*	*7.5%*

Source: European Commission

As shown above, rounding results in size criteria increased by 6.7% to 7.5%. This is reasonably close to intended inflation rate and consistent for each size criterion. The above size criteria are therefore used as a sound basis for analysing impacts.

Analysis of impacts in the euro area

The analysis of impacts focuses on the obligations of Member States and their impacts on companies (stratification by size ([16]), costs) in the euro area. The analysis was conducted per Member State, applying inflation of 6.4% to the current national criteria and rounding rules in each Member State. It was considered that all Member States would adjust their size-criteria despite the leeway they would be offered ([17]), thus giving the higher bound of impacts. The lack of meaningful data meant the impact on Cyprus could not be assessed.

[16] Based on ORBIS and *Study on the accounting regime of limited micro companies* – CEPS – 2019. Impacts on population have been estimated for each Member State in the euro area, using national size criteria and applying reasonable rounding.

[17] Member States may only partly be compelled to revise their national size criteria. The Directive offers a range of options for the small size criteria. Only 9 Member States in the euro area (implementing the lower end of the range) would be compelled to adjust for inflation. These account for 1/3 of small companies. The other Member States (accounting for 2/3 of small companies) would have leeway to decide to not implement the adjustment. This survey assumes that all euro area Member States will adjust their size criteria for inflation.

- Micro-companies

The micro-regime is an option for Member States. It is estimated that the adjustment of size criteria would have no impact on the Member States in the euro area with no micro-size category or regime (Cyprus, Spain, Luxemburg and Malta). As for other Member States in the euro area, adjustment for inflation of the micro-company size criteria would result in around 77 000 companies' (higher bound) no longer being considered small companies, but micro-companies instead. Potential cost savings are summarised below.

- Small companies

An adjustment for inflation would reduce the number of small companies in the euro area by around 61 000, mainly as a result of 77 000 becoming micro-companies, partly compensated for by around 16 000 medium-sized companies' becoming small.

If the status of 77 000 small companies became micro, they would make overall cost savings of approximately EUR 7 million ([18]). Potential cost savings for medium-sized companies are summarised below.

- Medium-sized and large companies

As seen above, the number of medium-sized/large companies would decrease by around 16 000 due to medium-sized/large companies' becoming small, leading to an overall reduction in annual compliance costs of around EUR 63 million ([19]) for these companies.

In this category, around 4 000 large companies would become medium-sized ([20]). It is estimated they would experience only marginal effects on their reporting regime: fewer notes perhaps; a possible exemption from the requirement to keep consolidated accounts; probably no change for companies subject to country-by-country reporting in the extractive sector, nor change of reporting regime applicable to public-interest entities, including non-financial reporting. Cost savings, deemed insignificant, were therefore not assessed.

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[18] Rough estimate – 77 390 * 6.0 hours saved * EUR15.28 average hourly earnings – derived from CEPS. Actual cost savings per company due to a change in size category will vary in practice, depending on each company's size, local legislation and circumstances.

[19] Rough estimate: 15 777 companies x EUR 4 000 savings per company, comprising EUR 1 000 for the preparation of financial statements, plus savings in audit fees in the region of EUR 3,000 (assuming all the Member States involved exempt small companies). Cost savings used here were reported by the Commission in the follow-up to the impact assessment in the context of the REFIT programme - see *Report on Action Programme for Reducing Administrative Burdens in the EU*, SWD(2012) 423 final (p.7, p.15 and p.16).

[20] For Member States without the medium-sized category (Belgium, France, Italy, Slovakia, representing 42% of companies), the adjustment of size criteria would have no effect.

The figure below summarises the impacts on population and costs in the euro area.

Figure 5 – Change in population and cost savings for each size category of adjusted size criteria in the euro area

Size category	Changes in population – euro area (higher bound)	Cost savings (higher bound)
Micro	+77,390	-
Small	-61,613	EUR 7 million
Medium/Large	-15,777	EUR 63 million

Source: European Commission

Knock-on effects on Member States outside the euro area and EEA countries

An increase in the euro-denominated size criteria would entail divergent obligations to adjust (or not) size criteria for the Member States outside the euro area. In addition to adjusting for inflation, the respective national size criteria denominated in national currency would also have to be adjusted on the basis of respective exchange rates against the euro ([21]) observed on the date the EU amending legal act enters into force. These future rates cannot be fully predicted and in any case, the Directive leaves leeway of 5% in order to make it possible to determine round size criteria in the national currencies. This prerogative of the Member States adds unforeseeable potential effects, especially as the leeway and inflation rate may add up or cancel each other out.

A rough analysis of the situation as at 31 July 2017 – disregarding the 5% leeway – shows that adjustments for inflation in the respective non-euro area countries would generally produce uneven results from one country to another. Adjustments would generally not be exactly commensurate with respective inflation rates, with only a few Member States being in a position to make adjustments in line with their own inflation. A few Member States could face an obligation to increase size criteria by several percentage points above the cumulative effect of their own inflation. At the other end of the spectrum, some Member States could afford not to adjust certain size criteria (especially small size criteria).

Conclusion

Given the moderate inflation in the euro area over the last few years, an adjustment of size criteria in current circumstances would deliver potentially limited results for companies in the euro area and uncertain results for companies in Member States outside the euro area.

These considerations make the case for an adjustment less pressing on the date of this report. Nevertheless, the Commission retains the right to propose adjustments to size criteria at any

[21] In 2013, the Accounting Directive prescribed (Article 3(9)) using the exchange rate published in the Official Journal of the EU on the date of the Directive's entry into force (29 June 2013). It also prescribes using the exchange rate published on the date of entry into force of 'any Directive setting those amounts'. The Commission interprets this as including subsequent legislative acts.

point in time to adjust for inflation by means of delegated acts, as the Accounting Directive permits.

Reports on payments to governments by companies active in the logging or extractive sectors (country-by-country reporting/CBCR)

Review clause: Directive 2013/34/EU (the Accounting Directive) – Article 48

Chapter 10 in the Accounting Directive introduced in 2013 requires large EU companies operating in the extractive or logging sectors to report annually on payments to governments from the 2016 financial year onwards. Payments must be disclosed by project and by government. A government may be local, regional or national and should by definition include any state-owned company.

Enhancing transparency of payments to governments

All the Member States implemented this policy in national law between 2014 and 2017. Most ensured that companies active in the logging or extractive sectors started their CBCR from financial year 2016 as required under EU legislation – or earlier (the UK, France). In three Member States the reporting started as from financial year 2017 only, with limited effects due to the number of companies affected. No major instance of non-compliance was identified, but the Commission is currently investigating a few compliance issues with certain Member States.

A compliance study by VVA consultants found ([22]) that in the extractive sector, a considerable amount of reporting is conducted, with no evidence of widespread non-compliance. Nevertheless, in certain cases the contractor could not obtain the CBCR of a number of companies and attributed this mainly to the recent stage of implementation, uneven access to companies' websites or business registers, or filing delays

On the logging of primary forests, VVA found only two reporting companies in the EU – far less than the hundred companies expected. This is mainly because of specific sectoral features (size, activities of a company) and inherent issues due to the Directive's restrictive definition of primary forests[23]. Given the lack of widespread reporting on payments to governments by logging companies, the major mechanisms in place to enhance transparency in the logging sector include the EU Timber Regulation (EUTR) ([24]) and the EU Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan ([25]) although neither EUTR nor FLEGT require operators to report on their due diligence effectiveness or suppliers being in breach with applicable legislation.

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[22] Valdani, Vicari and Associati, *Study: Review of country-by-country reporting requirements for extractive and logging industries*, November 2018 (available on Commission website).

[23] Defined in the Accounting Directive as a "forest of native species, where there is no clearly visible indication of human activities and the ecological processes are not significantly disturbed". Secondary forests are natural forest which have been logged at least once. An important portion of logging companies operate outside primary forests.

[24] EU Timber Regulation (EUTR – Regulation (EU) No 995/2010).

[25] https://www.euflegt.efi.int/documents/10180/452147/FLEGT+factsheet+Trade+and+market.pdf/5ceb3405-3161-26a8-a03c-de87eba7dc5a

In the sample of reports VVA studied, most companies had provided the required information. Several areas in which there is room for improvement were identified. These areas, which appear to have more to do with weaknesses or flexibility in the reporting standard than with compliance, are listed below.

- Identification of governments by name – the name of the government entity that received payment is not always clearly spelled out in the reports. Many companies only mention the name of the country and/or ‘national’, ‘regional/local’ or ‘municipal’ government. As a result, the right government entities cannot easily be identified and held to account.

- Project definition – the legal implications of the wording: ‘substantially interconnected agreements’ defining a project is open to different interpretations by companies. Consequently, reporting on each project varies across companies, making it difficult to have a complete and consistent overview of projects involving several companies.

- Joint ventures – joint ventures occur frequently in the extractive sector. Companies tend to team up with other companies, including State-owned companies, to share investments and operations. Usually, one of the ventures is in charge of keeping records of operations for all the ventures. In the absence of clear instructions in EU law, there are various ways of reporting payments: (i) proportionally to the venture’s own share in the joint venture, (ii) 100% of the joint venture’s payments reported by the venture in charge (in which case other ventures may consider not reporting despite being under a legal obligation to do so), or (iii) other ways. Consequently, reporting results are not fully comparable, or absent.

- Digital usability – absent machine-readability, users find it difficult to exploit data reported on a large and recurring scale.

There are clear signs that CBCR is used, mainly by civil society to raise awareness, to prepare digests or infographics, or to request clarifications from governments and companies, thereby making them accountable. Given this is a recent policy, public awareness of the reports remains limited in most countries. It is still too early to notice significant changes in government accountability (especially in the case of less democratic or open governments) or in resource governance in resource-rich countries. An unintended impact of the Directive is that the CBCR is used a lot by civil society to question companies and hold them to account. In any event, the reporting requirements have been deemed, at least by civil society, to be effective in increasing the transparency of payments made by companies to governments for the exploitation of natural resources.

The case for including the additional information suggested in the review clause, namely the average number of employees, the use of subcontractors and any pecuniary penalties administered by a country, does not seem to have widespread public support according to a VVA survey. Civil society would in principle welcome additional transparency, but these items are not their top priorities. Business is generally reluctant to add any reporting requirement, on the basis of cost-benefit ratios. National authorities also tend to not be convinced that these extra items would make it possible to better achieve the objectives of the

reporting requirements. The Commission included the number of employees in its proposal for public CBCR by large multinational companies in 2016 ([26]).

International developments, impacts of other international regimes

Canada, Switzerland, the United Kingdom and the European Economic Area have effective legislation in place to ensure CBCR by their respective extractive industries ([27]). Canada adopted CBCR legislation ([28]) as of 1 June 2015. The EU considers the Canadian standard equivalent to its own ([29]). Likewise, the Canadian Minister for Natural Resources has the authority to allow reporting entities to substitute reports prepared in another jurisdiction (whose requirements are considered an acceptable substitute) to meet Canada's requirements in the EU as well as in the European Economic Area. This way, the EU and Canada avoid multiple reporting and therefore undue burden for companies. The EU and the United Kingdom are the sole jurisdictions that require public CBCR for logging industries.

In parallel, the Extractive Industries Transparency Initiative (EITI) is a private initiative aimed at making the extractive sector accountable. The EITI is an international non-profit association registered under Norwegian law. It brings together members from governments, oil, gas and mining companies, institutional investors, and civil society organisations, in order to improve openness and accountable management of revenues from natural resources. It currently consists of 52 implementing countries. EITI reports – published under member countries' governmental authority – contain the payments received by governments from extractive companies active in their jurisdiction. Reports drawn up under this initiative are public and machine-readable. They show payments broken down by project in a given country, along the same lines as EU policy.

EITI and EU CBCR complement each other. From the outset, EU CBCR has required the disclosure of types of payments consistent with EITI requirements. Likewise, EU requirements have influenced EITI requirements to a certain extent, for instance on project-by-project reporting. In any given country, the EITI is likely to present more comprehensive information in relation to that country than EU CBCR. This is because EITI reports cover not only operations controlled by the EU or Canadian industries, but also by other foreign companies and national companies – including State-owned ones. However, EITI reports are geographically limited, because one report covers only one country. EITI reports are also usually published over 1 year later after an EU CBCR report for a given year. EITI membership has increased since the Accounting Directive was adopted. There is no clear or direct correlation between the two, but that does not detract from the objective stated in Recital 45 of the Accounting Directive that CBCR should help governments of resource-rich

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[26] Commission proposal for a Directive as regards disclosure of income tax information by certain undertakings and branches, COM/2016/0198 final - 2016/0107 (COD), April 2016.

[27] To be effective, Section 1504 of Dodd - Frank Act requires a Rule to be adopted by the US Securities and Exchange Commission (SEC). Such a Rule was not yet in force at the date of this report. As a result, companies listed on a US stock exchange (US and foreign private issuers) have so far had no CBCR obligations to fulfil, but the situation may change in the near future.

[28] Canadian Extractive Sector Transparency Measures Act (ESTMA).

[29] Commission Implementing Decision (EU) 2016/1910 of 28 October 2016.

countries to implement EITI principles and criteria. A number of factors prevent, at least for now, EITI requirements from prevailing over EU ones, and the other way round.

Civil society and industry call on the Commission to continue reaffirming the EU's commitment to promoting transparency in the extractive sector in international fora, in order to encourage the its international partners to introduce similar reporting requirements worldwide.

Effects on competitiveness and security of energy supply

The EU is heavily dependent on a few countries for both its crude oil and gas supply. Any limitations of the operations of EU companies in strategic resource-rich partner countries due to the reporting requirements would have an impact on energy security.

VVA found no evidence that competitors from non-EU countries have significant competitive advantages by not being required to report on payments to governments. Nor did it find any cases of non-EU countries' limiting the operations of EU companies due to reporting requirements. Nevertheless, business remains concerned with the lack of a level playing field, because the US, Chinese and other competitors are not under the same transparency obligations. The industry is concerned about competitiveness risks in the long run on account of this lack of a level playing field. An academic study ([30]) seems to support this assertion, finding that companies disclosing CBCR tend to increase their payments to host governments and to decrease and reallocate investments relative to non-disclosing competitors in those countries.

Nevertheless, so far there have been no otherwise tangible effects on the EU's energy supply. CBCR policy is only a couple of years old. This is much less than the usually much longer industry cycles in mining, oil, etc. from exploration and investment to closure. For this reason, a close eye should be kept on the situation from a risk point of view.

Extension of the reporting requirements to additional industry sectors

For civil society, to extend CBCR to additional industry sectors (e.g. telecoms, construction) could help mitigate societal and investor risks, as well as preventing and deterring illegality, corruption and fiscal mismanagement. Nevertheless, experts and NGOs tend to recognise the unworkability of a one-size-fits-all solution – just wholesale transferring CBCR standards for extractive industries to other industries by, for instance, merely expanding the scope of the Directive. Tailored requirements would be necessary for any additional sector. Another concern is that the effectiveness of such a measure also depends heavily on a firm's size and the internationality of the sector. This means it might be impractical to define an appropriate scope in EU law for certain sectors, as it would depend on how much EU industries are invested abroad locally in the relevant sector, large enough in their own right, and paying significant amounts to governments. In addition, whereas the objective of CBCR is primarily

[30] Thomas Rauter, *Disclosure Regulation, Corruption, and Investment: Evidence from Natural Resource Extraction* – February 2019.

to empower local populations faced with the exploitation of their natural and non-renewable resources, such reporting may not be suitable for achieving similar objectives in sectors of which environmental and vicinity factors are not intrinsic parts.

Audit

Audit is not a mandatory reporting requirement. Nevertheless, certain large multinational companies voluntarily use the services of independent auditors to provide additional assurance, in order to increase the credibility and reliability of their reports for users.

If audit were mandatory, stakeholders would like to have further specification of the type of engagement, level of assurance, timing, reporting content and publication. Assuming a traditional audit engagement, VVA put the estimated annual costs in the range of EUR 450 000 to EUR 1 500 000 per company. Assuming a simpler review engagement with limited assurance, this would go down to between EUR 250 and EUR 450,000. The costs of other types of engagement – with or without assurance services – were not assessed.

The audit of CBCR is not a top priority for civil society, as users, even though they recognise that an audit of CBCR would increase confidence and streamline the application of standards. Expectations that the audit function could help remedy weak points in standards, such as those set out in this report, may in any event be misplaced. Business and regulators tend to not support (or at least to challenge it) the audit from a cost-benefit perspective.

Public CBCR applicable to multinational companies in general

In 2016, the Commission proposed legislation to require large companies to produce annually a CBCR for each Member State and non-EU countries in which they operate, containing information on profits made and taxes paid on profits ([31]).

Sourcing minerals (due diligence)

The EU has passed legislation on supply chain due diligence obligations in relation to minerals sourcing (Regulation (EU) 2017/821) ([32]).

Conclusion

CBCR is a recent reporting obligation. Reports have been available for a few financial years only. A longer observation period would be necessary to more thoroughly assess certain aspects of effectiveness and any long-term effects on the EU's energy supply. The review highlights a number of weaknesses in reporting standards. These hamper access to, and use of, the reports, but are not fatal flaws. The way the logging sector is incorporated into legislation in this area, in particular, appears to be suboptimal. The policy overall undeniably makes the

[31] *Commission proposal for a Directive as regards disclosure of income tax information by certain undertakings and branches*, COM/2016/0198 final - 2016/0107 (COD), April 2016.

[32] Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas.

sector more transparent, but global alignment remains a major concern for the industry. This is why both civil society and industry would like regulators to step up efforts to achieve a global level playing field.

Non-financial information to be published by certain public-interest entities

Review clause: Directive 2014/95/EU (Non-Financial Reporting Directive) – Article 3

Effectiveness

The staff working document attached to this report has examined the effectiveness of the Non-Financial Reporting Directive (NFRD) from different points of view, including the relevance, reliability and comparability of the information disclosed in accordance with its requirements.

On the relevance front, there is a significant amount of evidence that many companies do not disclose material non-financial information on all major sustainability-related matters. At the same time, companies disclose significant amounts of information that is immaterial, making it harder for users to find the information they are looking for. These conclusions are true for information about the company's impact on sustainability-related matters and for information about the impact of these matters on the company's development, performance and position. In the public consultation organised by the Commission services in 2020 to prepare a revision of the NFRD, only 6% of users said that they did not experience problems regarding the failure of companies to disclose all relevant information.

The Taxonomy Regulation will lead to progress in corporate reporting on the impact of companies' activities with regard to EU environmental objectives. Initiatives in the field of natural capital accounting and environmental footprint methodologies are also relevant in this regard.

The use of the term 'non-financial information' is problematic in the case of sustainability-related information. This is because information related to physical, transition or reputational risks can in fact be financially material, even if it does not fulfil the recognition or disclosure requirements of the accounting framework applicable to financial statements.

On the comparability front, respondents to the public consultation carried out in 2018 as part of the Fitness Check exercise on the EU corporate reporting framework claimed to have difficulty comparing the non-financial information disclosed by companies. This is consistent with the conclusions of most reports and analyses and with the views of various stakeholders. In response to the 2020 public consultation, 84% of users said that the limited comparability of non-financial information was a significant problem.

There is a lack of consistency in both the content and presentation of sustainability-related information. Existing standards and reporting frameworks have not been able to adequately resolve this situation. Users of non-financial information, including investors and civil society organisations, have also indicated that the variety of locations where non-financial information is reported can hinder access to the information and strongly affect its comparability. As noted in the staff working document, digitalisation could also play a role in improving the accessibility and usability of non-financial information.

A large majority (82%) of all respondents to the 2020 open public consultation believed that requiring companies to use common reporting standards would resolve the main problems with current non-financial reporting.

In response to the 2020 public consultation ([33]), 73% of users said that the limited reliability of non-financial information in company reports was a significant problem. Many users argue that this is mainly due to the absence of an assurance requirement for the content of non-financial statement. Some stakeholders argue that in order to be able to assure information, there has to be a reporting standard or framework against which audit firms can assess the information reported by companies.

In addition, the option of allowing the publication of a company's non-financial statement in a separate report, taken up by 20 Member States, appears to undermine the effectiveness of the Directive. The disclosure of non-financial information in a separate report, instead of in the management report, might lead to the supposition that the information disclosed is not important for understanding the company's financial performance, but this is not always the case.

Furthermore, in many Member States there are enforcement and supervision gaps arising from a number of factors. These include uncertainty about the legal mandate of supervisory authorities in this field. Supervisory authorities themselves point out that the enforceability of the Directive is made harder by the flexibility of some of the disclosure requirements.

The NFRD is also not considered fully effective from the point of view of preparers, many of whom incur unnecessary costs associated with non-financial reporting. The flexibility and lack of granularity in the NFRD mean that many preparers have to contend with difficulty and complexity when deciding what information to report. They are also under pressure to report in accordance with a variety of overlapping private reporting frameworks and initiatives, and to respond to information requests from stakeholders in addition to what they must report pursuant to the NFRD.

Scope

Many companies from whom users need non-financial information are under no obligation to report such information. The 2020 public consultation found that a majority of respondents are in favour of extending the scope of the directive to all large companies (70% of respondents) and all companies with securities listed on EU regulated markets (62% of respondents).

The reasons for considering extending the scope to large non-listed companies include the fact that the impact of a company on society and the environment is not determined by whether it is listed or not. An extension of the scope to all listed companies might be considered important from the perspective of investor protection, considering the growing relevance of

[33] See European Commission website.

sustainability-related risks. It may also be necessary in order to ensure that financial market participants have the information they need from all investee companies to be able to fulfil their own sustainability disclosure requirements under the Sustainable Finance Disclosure Regulation, and to ensure that they do not decide to exclude smaller listed companies from investment portfolios on the basis that such companies do not report the necessary information.

Relevance

Although the initial objectives of the NFRD are still highly relevant, the Directive is no longer fit for purpose. This is because of other policy and legislative developments, a growing demand for information from investors, and recent developments in internationally recognised reporting frameworks and guidelines.

At a global level, the 2015 agreement on the UN Sustainable Development Goals and the 2016 Paris Agreement on climate change have given a stronger political impetus to the transition to a sustainable economy, and contributed to a growing awareness of the strategic importance of sustainability issues among businesses and investors.

At EU level, the 2018 Sustainable Finance Action Plan and the 2019 European Green Deal have significantly increased Europe's political ambition to move as rapidly possible towards a sustainable economic and financial system. As part of the Sustainable Finance Action Plan, the EU has adopted the Taxonomy Regulation and the Sustainable Finance Disclosure Regulation (SFDR). Both pieces of legislation have important implications for the non-financial information companies should disclose. By imposing sustainability disclosure requirements on financial market participants, the SFDR will have a direct impact on the information they need from investee companies. The Taxonomy Regulation imposes new requirements on companies under the scope of the NFRD to disclose their alignment with activities that qualify as being environmentally sustainable according to the taxonomy.

There have been some significant developments in international non-financial reporting frameworks and guidelines. Since 2014, there has been a proliferation of different initiatives that partially overlap and are not always consistent with each other. In 2016 the Global Reporting Initiative ([34]) published its first standards, building on its previous generations of guidelines. In 2018, the Sustainability Accounting Standards Board (SASB) published 77 industry standards for the disclosure of financially material sustainability-related information. The Task Force on Climate-related Financial Disclosures (TCFD), established by the G20's Financial Stability Board, published its recommendations in 2017. The recommendations sparked widespread interest in the market. Other developments since 2014 include a Statement of Intent from five international sustainability reporting initiatives to cooperate more closely, an initiative by the World Economic Forum to develop common reporting indicators, and the launch in 2020 of a public consultation by the International Financial

[34] www.globalreporting.org

Reporting Standards Foundation on the possible extension of its work to non-financial reporting.

Level of guidance and methods provided

In mid-2017, as required in accordance with the Directive, the Commission published Non-Binding Guidelines, to help companies implement it. They provide general non-prescriptive guidance for companies, including disclosure examples for each reporting area.

There is little evidence that the non-binding guidelines on non-financial reporting, published by the Commission pursuant to the Directive in 2017, have had a significant impact. The voluntary nature of the guidelines means that companies are free to apply them or not as they see fit. Overall, this means that on their own, they cannot ensure the comparability of information between companies or the disclosure of information users believe is relevant. The non-binding guidelines may even exacerbate the complexity preparers have to contend with. This risks being the case if preparers perceive them as additional to the various private non-financial standards and frameworks, without removing the pressure to take each standard and framework into account individually and respond to stakeholders' additional information requests.

In June 2019 the Commission published a supplement to its 2017 guidelines, focusing on the reporting of climate-related information and integrating the recommendations of the TCFD. Because it focuses on one particular issue (climate), this supplement is expected to have a more significant impact on the comparability of information disclosed by companies.

Conclusion

In the European Green Deal, the Commission announced its intention to review the NFRD. According to its revised 2020 Work Programme, the Commission will adopt a proposal to revise the NFRD in 2021. The main issues at stake include: the limited comparability and reliability of reported information; the fact that many companies do not report information users consider relevant; and the failure of many companies from whom users need non-financial information to report such information. Imposing a requirement on companies to report according to common non-financial reporting standards is a crucial part of the puzzle in addressing these issues.

Disclosure requirements for issuers with securities listed on the EU regulated markets

Review clause: Directive 2013/50/EU (the Transparency Directive) – Article 5

Impact of the Directive on small and medium-sized issuers

Directive 2013/50/EU amending Directive 2004/109/EC (the Transparency Directive or TD) abolished the obligation to publish quarterly financial information ([35]). The aim in doing so was to reduce administrative burden for listed companies ([36]), encourage longer-term investments and improve access to capital for small and medium-sized issuers ([37]). The Directive allows Member States and regulated markets to require quarterly reporting insofar as it is proportionate to the factors contributing to investment decisions and does not constitute a disproportionate financial burden for the issuers of the Member State concerned. It also extends, to 3 months after the end of the reporting period, the deadline for publishing half-yearly financial reports, in order to provide additional flexibility and increase the visibility of small and medium-sized issuers.

A few years on, the markets consider these transparency rules to be overall proportionate and accurate for small and medium-sized issuers ([38]). The abolition of the quarterly reporting obligation is perceived as alleviating the administrative burden on listed companies, without any adverse impact on investor protection. However, there is evidence that many issuers still disclose quarterly reporting – either voluntarily ([39]), or because it is required by their respective Member States or regulated market ([40]). This has had the effect of limiting the scale and weakening the impact of abolishing the quarterly reporting obligation.

[35] Either quarterly financial reports or interim management statements, generally referred to as quarterly financial information.

[36] In the staff working document accompanying the Commission's proposal for Directive 2013/50/EU (COM(2011) 683 final}{SEC(2011) 1280 final}), the Commission services estimated the average direct monetary costs of producing quarterly information linked to editing, printing and translating reports as varying from EUR 2 000 per year/to EUR 60 000 a year/per small and medium-sized issuers.

[37] EU legislation does not define small and medium-sized issuers. There are a few EU definitions of SMEs covering small-sized enterprises. However, these do not differentiate between listed and non-listed companies. The reference to small and medium-sized issuers in this report should be understood as referring to the existing national concepts in the different Member States.

[38] According to the responses to several consultations, but in particular the Commission's Summary Report of the Public Consultation on the Fitness Check on the EU framework for public reporting by companies. The government experts in the Expert Group of the European Securities Committee (EGESC), consulted in Q1 2019, also tend to confirm this.

[39] On the basis of the outcome of the EGESC consultation in at least 15 Member States, issuers choose to publish their quarterly financial information in order to give their investors customised information or simply in response to peer pressure. The larger the company, the more willing it is to report quarterly.

[40] Based on the outcome of the EGESC consultation, at least 5 Member States still require the disclosure of quarterly reports, and in at least 7 where quarterly reporting is not mandatory, the regulated markets require disclosure.

Digitalisation

The TD requires each Member State to establish a storage mechanism (the Officially Appointed Mechanism or OAM) to ensure that the public can access the information disclosed by listed companies. The TD prepares the ground for centralised access to regulated information, in the form of a European Electronic Access Point (EEAP). The EEAP is not yet operational, but Regulation 2016/1437 ([41]) is a stepping stone on the way towards streamlining access to information with this access point ([42]). Access to information remains nevertheless fragmented. In its new Action Plan on the Capital Markets Union (CMU) ([43]), the European Commission proposes to complete the CMU by setting up an EU-wide platform – the European Single Access Point (ESAP). Likewise, the Digital Finance Strategy ([44]) aims to create a European financial data space in order to promote data-driven innovation, building on the European data strategy, including easier access and use of data.

Further to the 2013 amendments to the TD, in 2019 the Commission adopted a Delegated Regulation to establish a European Single Electronic Format (ESEF) for the preparation of Annual Financial Reports (AFRs) by listed companies (the ESEF Regulation) ([45]). The ESEF Regulation will apply to companies from financial year 2020 (i.e. the first AFRs in ESEF will be published in 2021)[46]. The objective is to make reporting easier and facilitate the digital analysis and comparability of AFRs by the users of the information. The ESEF combines the extensible hypertext mark-up language format with the internal data structure, building on inline eXtensible Business Reporting Language (iXBRL). The ESEF Regulation provides for a gradual development of ESEF. The block tagging of notes will become mandatory from financial year 2022. In addition, specifications on the taxonomy to be used for legal entity reports using national Generally Accepted Accounting Principles or non-EU country Generally Accepted Accounting Principles remain to be addressed.

Even though it has not yet been applied, the ESEF Regulation has raised a number of concerns for the reporting companies, national regulators and oversight bodies, in particular about the audit of ESEF-compliant financial statements. In order to provide the market with guidance and to ensure the convergence of national auditing practices, in November 2019 the Committee of European Auditing Oversight Bodies (CEAOB) published non-binding

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[41] Commission Delegated Regulation (EU) 2016/1437 of 19 May 2016 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on access to regulated information at Union level, OJ L 234, 31.8.2016, p. 1–7.

[42] For instance, most OAMs have structured their public search tools along the lines of the classification in this Regulation.

[43] *New CMU action plan*.

[44] *Digital finance package*.

[45] Commission Delegated Regulation (EU) 2019/815 of 17 December 2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on the specification of a single electronic reporting format, OJ L 143, 29.5.2019, p. 1–792.

[46] During trilogue negotiations for the Capital Markets Recovery Package held in December 2020, the co-legislators agreed to include in the package an amendment to Article 4(7) of the Transparency Directive that allows Member States to opt for a 1-year postponement of the ESEF obligation, provided that they notify the Commission of their intention to postpone and that such intention is duly motivated.

guidelines on how to audit ESEF in practice[47]. In addition, the Commission published an interpretative Communication in November 2020 ([48]).

Application of the TD sanctioning regime

In order to ensure further harmonisation and reinforcement of national sanctioning regimes ([49]), the 2013 TD amendments require each National Competent Authority (NCA) to have minimum sanctioning powers for breaches of certain key provisions. In particular, it imposes the establishment by Member States of minimum administrative measures and sanctions (e.g. issuance of pecuniary sanctions and publication of the measures and sanctions issued by the NCA) that need to be effective, proportionate and dissuasive, and that must be applicable to both natural and legal persons. Member States are in any case allowed to provide for additional sanctions or measures and for higher levels of administrative pecuniary sanctions.

According to the results of consultations and analysis ([50]), the 2013 amendment to the TD has led to more homogeneous sanctioning regimes across Member States. However, there could be greater harmonisation in the application of effective, proportionate and dissuasive administrative measures for breaching transparency rules. There are also concerns about enforcement activities, which may jeopardise the conform application of the TD sanctioning regime. The TD obliges Member States to provide NCAs with minimum supervisory powers, but does not specify further how to exercise these powers. ESMA devotes important efforts to achieve supervisory convergence of NCAs' enforcement practices ([51]). However, national practices tend to remain heterogeneous from an EU perspective, for instance in terms of scoping, enforcement measures ([52]) or the publication of sanctions. Also, because of the minimum harmonisation approach, the definition of supervisory powers tends to differ significantly across Member States. For instance, certain NCAs have limited powers to conduct investigations into non-financial reports when they are separate from the management reports. Against this backdrop, the collapse of Wirecard ([53]) highlighted that some national practices may not be as effective as intended, and shed light on additional potential areas for improvement. In particular, ESMA's Fast Track Peer review ([54]) identified deficiencies in the

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47 *CEAOB guidelines on the auditors' involvement on financial statements in ESEF*.

48 *ESEF Interpretative Communication*.

49 Following the Commission's December 2010 communication *Reinforcing sanctioning regimes in the financial services sector*.

50 In particular the outcome of the consultation of the EGESC in Q1 2019.

51 ESMA fosters convergence through guidelines, Q&As, work programmes, the committee's work, activity reports, etc. In 2014 it published its *Guidelines on the enforcement of financial information,* which were revised in 2020. Its *Q&As on the Transparency Directive*, also covering aspects of the application of the sanctioning regime, are regularly updated.

52 See for instance ESMA's *Report Enforcement and regulatory activities of European enforcers in 2019*. As regards the publication of sanctions, a survey of experts at the EGESC shows that there are various practices, involving for instance the non-publication of the measures in certain circumstances, as permitted in accordance with the TD. Access remains fragmented geographically, for the lack of an EU single access point.

53 Wirecard, a German company with shares listed on regulated markets, declared bankruptcy in June 2020 after revelations that €1.9 billion in cash reported in the group's balance sheet was missing.

54 ESMA, *Fast Track Peer Review on the application of the Guidelines on the enforcement of financial information (ESMA/2014/1293) by BAFIN and FREP in the context of Wirecard*, 3 November 2020.

enforcement of Wirecard's financial reporting in Germany, showing - inter alia - that some national rules may not be sufficient to ensure an efficient exchange of information between national authorities and an examination of financial information by independent competent authorities. The TD offers the possibility to designate a competent authority other than the central competent authority to examine that the information is drawn up in accordance with the relevant reporting framework, and to take appropriate measures in case of infringements. However, TD remains silent as regards the need for this authority to be independent and respective responsibilities of both the central and the other authority. Following up on its Fast Track Peer Review, ESMA has engaged in discussions on potential improvements to the TD and considered that the following actions could help achieving a more timely and effective enforcement of financial information: (i) enhancing the cooperation between TD NCAs and other authorities; (ii) enhancing the coordination of enforcement of financial information at national level between central competent authorities and delegated entities/designated authorities; (iii) strengthening of the independence of national competent authorities; and (iv) strengthening of harmonised supervision of financial and non-financial information across the EU ([55]). The Commission is closely monitoring the Wirecard case. Additional lessons may be drawn up in relation to the TD or other areas over time.

Functioning and effectiveness of the method for calculating voting rights in relation to financial instruments under Article 13 of the TD

Under TD rules, all natural and legal persons holding financial instruments relating to shares must notify the issuer of the acquisition or disposal of major holdings. To prevent the use of new types of financial instruments to secretly acquire stocks in companies ([56]), the 2013 TD amendment stated that all instruments with the economic effect of holding shares or being entitled to acquire shares must be taken into account. The full notional amount of shares underlying the financial instruments is retained. For cash settlements, the number of shares held is calculated on a delta-adjusted basis ([57]), by multiplying the notional amount of underlying shares by the delta of the instrument. This calculation method is further specified in Commission Delegated Regulation (EU) 2015/761 ([58]). It allows issuers and investors to have comprehensive knowledge and an accurate picture of the structure of corporate ownership and voting rights.

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[55] See ESMA's *Letter to Commissioner McGuinness of 26 February 2021 on the next steps following Wirecard*.

[56] Which could result in market abuse and give a false and misleading picture of economic ownership of publicly listed companies.

[57] The delta of a financial instrument is the ratio that compares the change in the price of an asset, usually a marketable security, to the corresponding change in the price of its derivative. It indicates how much a financial instrument's theoretical value would move in the event of a variation in the underlying instrument's price, giving an accurate picture of the holder's exposure to the underlying instrument.

[58] Commission Delegated Regulation (EU) 2015/761 of 17 December 2014 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to certain regulatory technical standards on major holdings. This Regulation states in particular that basket and index instruments should only be reported if the relevant securities represent 1% or more of the underlying issuer's voting rights, or 20% or more of the value of the securities in the basket/index, or both. A principles-based approach was adopted as the method for determining the delta. This method nonetheless provides sufficient accuracy and comparability if consistently supervised. It also allows newly developed derivative instruments to be captured, minimising the scope for regulatory arbitrage.

In its 2014 cost-benefit analysis ([59]), ESMA documented that costs for regulators and issuers were likely to be minimal. In the consultations carried out ([60]), no concerns were raised about costs. A few stakeholders (companies, NCAs), as well as some government experts ([61]), however argued that the method for calculation voting rights could be seen as complex or difficult to interpret.

In most cases, Member States did not transpose these provisions into their national legislation until early 2016. The Commission Delegated Regulation on the calculation methods for major holdings was directly applicable by the end of 2015. Based on the Commission's prior assessment, it might be too soon to draw conclusions about the effectiveness of this calculation method for transparency purposes. A six-year application period would be needed to observe the possible progressive modification of the different stakeholders' behaviour and the possible development of new financial instruments.

Notification of major holdings by shareholders

In order to improve legal certainty, enhance transparency and reduce administrative burden for cross-border investors, the TD established a more harmonised regime for the notification of major holdings of voting rights by shareholders. Member States are not allowed to adopt more stringent rules except in specific circumstances ([62]). Shareholders are encouraged to use the standard format designed by ESMA for submission to both the issuer and the relevant NCA ([63]).

The possibility for Member States to introduce more stringent requirements for shareholders' notification in specific circumstances has led to diverging notification regimes across Member States ([64]). Eight Member States decided to set a lower threshold than the 5% specified by the TD. The vast majority of Member States also included additional higher thresholds. National rules also vary on the definition of the event that triggers the notification obligation for shareholders, the amount of time after which a shareholder is deemed to have learned of the triggering event, the deadline for the shareholder to notify the issuer, the communication channel for submitting the notification (email, digital portal, fax or post). Consultations have

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[59] See Annex III to the *Consultation Paper on Draft Regulatory Technical Standards on major shareholdings and indicative list of financial instruments subject to notification requirements under the revised Transparency Directive*.

[60] See the responses to the Commission's public consultation on public corporate reporting by companies and the responses to the EGESC questionnaire (re Annex III of the SWD on the fitness check).

[61] EGESC.

[62] Under Article 3(1a) of the TD, Member States are allowed to impose more stringent requirements when: (i) setting both lower and additional thresholds for the notification of holdings of voting rights, and requiring equivalent notifications of thresholds based on capital holdings; (ii) imposing stricter obligations for the content (such as the disclosure of shareholders' intentions), process and timing of notification; (iii) applying laws, regulations or administrative provisions adopted on takeover bids, merger transactions and other transactions affecting the ownership or control of companies supervised by the authorities appointed by Member States pursuant to Article 4 of Directive 2004/25/EC (the Takeover Bids Directive) that impose more stringent disclosure requirements.

[63] The form is available at https://www.esma.europa.eu/document/standard-form-major-holdings

[64] See ESMA's 2019 *Practical guide on national rules on notification on major holdings*.

shown that this results in additional cross-border investment costs for shareholders, given the variety of applicable regimes depending on the issuer's home Member State.

The situation is similar for the deadline and format for issuers to make shareholders' notifications public. According to the majority of respondents, the different notification regimes across Member States can be challenging for users of information disclosed by issuers, especially in terms of timing and communication channels. Some users would be in favour of a mandatory standard form for the issuers' disclosure of shareholders' notifications in order to make it easier to compare and to analyse the information disclosed. The standard form published by ESMA is not mandatory (although NCAs are expected to provide an explanation if they decide not to impose it on the issuers they supervise). This results in the use of different notification forms.

For these reasons, the Commission is being urged to exercise its delegated powers in order to adopt technical standards specifying – and harmonising – notification requirements to the extent necessary.

Report on payments to governments by companies active in the logging or extractive sectors (country-by-country reporting/CBCR)

Complementing Chapter 10 of Directive 2013/34/EU (the Accounting Directive), the 2013 TD amendment introduced the obligation for issuers with activities in the extractive or logging sectors of primary forest industries to publish an annual report on payments made to governments in the countries in which they operate. This report must be prepared in accordance with Chapter 10 of the Accounting Directive.

Overall, Member States correctly transposed this provision for capital markets. See the section on CBCR in this report for further details.

Conclusion

The 2013 amendment to the TD has generally improved the functioning of capital markets by alleviating the burden for small and medium-sized issuers, by allowing machine-readability (ESEF) to be brought in to improve the comparability of listed companies' information for users, and by harmonising the calculation of voting rights. However, the Commission notes a number of concerns, especially as regards the enforcement of financial and non-financial information. Some national practices may not be as effective as intended since they are perceived as insufficient to ensure an efficient exchange of information between national authorities and an examination of financial information by independent competent authorities. The Commission also notes the adverse impacts of divergent national rules concerning shareholders' notifications on the integration of EU capital markets.