

**Promoting sustainable business
practices and social responsibility –
Avoiding superfluous and adverse
reporting obligations**

**Comments on the EU-Commission's Proposal for a
Directive amending Directives 78/660/EEC and
83/349/EEC as regards disclosure of non-financial and
diversity information by certain large companies and
groups**

1 General Remarks

Deutsches Aktieninstitut is strongly committed to promoting the subject of Corporate Social Responsibility (CSR) and welcomes the European Commission's dedication thereto. Listed companies not only in Germany but all across Europe have at large and long since accepted their social responsibility and the necessity of sustainable business practices. Europe already is the world's region with the largest acceptance of the UN Global Compact by companies. Like the European Commission, Deutsches Aktieninstitut sees CSR as a key opportunity to rebuild trust and to foster long-term investments and economic growth. These objectives lie in the core-interest of listed companies.

With regard to the Commission's proposal Deutsches Aktieninstitut views it as essential that the right balance is struck between the interests of companies and the true needs of investors. At present especially smaller listed companies already struggle to attract the interest of major capital market players, like investors and analysts, for their financial data. As investors seem to be reluctant at large to show any interests for the non-financial data provided by these companies the benefit of the Commission's proposal for smaller companies remains unproved.

Against this background and for the overall benefit of growth any concept of non-financial reporting should follow a proportionate approach. While essentially taking into account the interests of the company and its strategy it must be ensured at the same time that CSR-reporting will not develop into a box-ticking-exercise. A one-size-fits-all approach focusing on the publication of non-material information would be of limited or no value for investors. It must be acknowledged in this context that most EU-member states have at large and long since already enacted detailed mandatory provisions on environmental-, social-, employee-protection-, anti-corruption- or human-rights-affairs. The duty to comply with these rules seems to make detailed reports of their adherence superfluous.

An additional burden of bureaucracy and costs for companies with no corresponding benefits for investors should be avoided. The creation of artificial competitive disadvantages for the European economy should be prevented.

2 Details of the Commission's proposal

Our remarks/concerns regarding the Commission's proposal summarize as follows:

- A duty to publish CSR-relevant information together with or even within the annual report is likely to exceed the reporting capacities especially of small- and mid-cap companies (German "*Mittelstand*"-companies).
- Disclosure duties focusing on non-material information will employ company-resources that could be used more efficiently for active CSR-projects.
- Making CSR-reports subject to a statutory audit would not only increase reporting-costs but also result in legal uncertainties as at present no accepted standards for the audit of non-financial data exists.
- Country-specific reporting obligations should be designed in a way to exclude the duty to publically disclose sensitive information
- Insufficiently short transition periods should be avoided. Especially small and medium enterprises need sufficient time to adjust to the concept of CSR-reporting due to their slim structures/organisation. This must be taken into account.

Deutsches Aktieninstitut therefore advocates the following objectives:

2.1 Timely Unbundling of CSR-Reporting Obligations vis-à-vis Annual Report

Mid- and small-cap companies normally have only limited resources dealing with reporting and transparency/disclosure obligations. The publication of an annual report containing detailed information on the enterprise's CSR-policy or a simultaneous publication of both the annual report and the CSR-report would put tremendous organisational challenges to all mid- and small-cap companies even if a publication in separate documents was allowed. Due to a lack of personnel and further resources small and medium enterprises will frequently struggle - and in the worst case not be able - to tackle these challenges.

Furthermore, simultaneous reporting will not benefit the investors' needs as the CSR-information available at the time when the annual report is prepared or even published would be too imprecise. This applies especially to consumption-figures

(e.g. electricity, water, gas, etc.). These figures corresponding to the reporting-period of the annual report are regularly delivered by service providers with a delay of several months. Gathering and processing this information takes time. Companies reporting simultaneously are thus forced to include in their reports estimations assessed by consulting firms. Besides the fact that this is a costly practice estimated figures do not seem to hold any advantages for investors and the general public alike.

Deutsches Aktieninstitut therefore calls for an unbundling of the reporting schedule. The possibility to publish the CSR-report on a reliable basis after all relevant information is available should be provided for. A statement describing when the CSR-report is expected to be published could be added to the annual report

2.2 Avoid Disclosure of irrelevant/non-material information

It must be ensured that companies will not be forced to disclose non-financial information which is irrelevant or immaterial for their stakeholders. Such disclosure-obligation will employ resources and cause costs which could rather be spent on active CSR-projects.

In this context it must be mentioned that the Commission does not present any evidence for its assumed additional costs of less than 5.000 Euros for large companies in case that the proposal enters into force. It must be assumed that the real costs related thereto will range much higher.

2.3 Statutory Audit of CSR-relevant Data problematic

Deutsches Aktieninstitut is sceptic as regards a duty of integrated reporting. CSR-relevant data which were to be included in the annual report in any case would automatically fall into the scope of the statutory audit.

According to our information received up to now no accepted or acknowledged standards for the audit of CSR-information exist. At present, auditing CSR-information is linked to legal uncertainties against which auditors need to reassure or protect themselves. Despite the fact that this could lead to a significant increase of the auditing costs for issuers, the benefit of an audit of CSR-information remains questionable also from the investors' point of view.

2.4 Proportionate approach to country by country reporting

Deutsches Aktieninstitut supports the Commission's objective to counter any form of white collar-crime such as corruption, fiscal fraud or criminal behaviour linked thereto. It should however be noted in the public debate that tax evasion mechanisms used by many transnational operating companies are legal and do not classify as criminal conduct in the vast majority of cases.

While acknowledging the aim to challenge tax evasion Deutsches Aktieninstitut believes that the introduction of country-by-country-reporting to the 4th and 7th Directive on annual and consolidated accounts will not be capable of countervailing tax competition between states on the European and on the global level. Against this background Deutsches Aktieninstitut favours proportionate rules not overwhelmingly burdening European companies.

We favour a proportionate and step-by-step approach as implemented in the CRD IV. This applies especially with respect to art. 89 para. 3 of the CRD IV. Prior to a public disclosure of figures on profit or loss before tax, taxes paid and public subsidies received this provision provides for a confidential disclosure/ submission of the afore-mentioned data to the European Commission as a first step.

As a second step it obliges the Commission to conduct an impact-assessment on the public disclosure of the afore-mentioned information before this information is made publicly available.

Such an impact assessment would be of essential importance in order to prevent European companies from severe disadvantages compared to their third-country and global competitors..

2.5 Sufficiently long transition periods for small- and mid-cap companies

Deutsches Aktieninstitut regards it as crucial to give smaller companies longer transition-periods as the whole subject of reporting non-financial information is still in process of adjusting to the needs of both investors and companies. The bureaucratic burden and costs related to the newly proposed transparency obligations should not be underestimated.

As previously mentioned small and mid-cap enterprises typically have limited resources available for reporting purposes and will thus need time to adjust to the regulatory changes proposed in order to build up reporting lines, train personnel

and recruit additional staff if necessary. Deutsches Aktieninstitut would favour to make transition periods dependent on the size/magnitude of companies and would like to propose the following rules:

- Companies with 10.000 or more employees should be required to adopt reporting rules without a delay.
- Companies with an average number of employees between 5.000 and 10.000 a balance-sheet total of 250 million Euros and respectively an annual turnover of 500 million Euros should be granted 3 years of transitional period.
- The latter figure being 6 years for companies with an average number of employees between 3.000 and 5.000, a balance-sheet total of 100 million Euros and an annual turnover of 200 million Euros.
- Finally 9 years for 500 to 3.000 employees and 50 million balance-sheet total, respectively 100 million annual turnover.

3 Conclusion:

Deutsches Aktieninstitut believes that non-financial reporting may provide companies with a chance of attracting long-term investments as a fundament for growth and resistance to crisis-situations. Due to the tremendous importance of this objective it should be ensured that the Commission's proposal will strike the right balance and not reach beyond its aim. The creation of competitive disadvantages for European companies should be avoided in any case.