



Luxembourg newsflash

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Disclosure of non-financial and diversity information

Luxembourg has now adopted the law implementing Directive 2014/95 amending the Accounting Directive (Directive 2013/34/EU) which requires certain large companies and groups to disclose non-financial and diversity information.

The main aim of the text is to increase EU companies' transparency and performance in respect of environmental and social matters.

Targeted companies

Only large companies or groups which fulfil certain materiality conditions will be required to disclose non-financial information. Large companies are namely listed entities as well as other public interest entities such as notably credit institutions and insurance companies. According to a statement made by the Luxembourg government, only a few dozen Luxembourg entities will fall within the scope of the law.

The scope of these non-financial disclosure requirements is defined in reference to the average number of employees, balance sheet total and net turnover.

Accordingly, the law applies to companies organised notably under the form of a public limited company (*société anonyme*), a European Company (*société européenne*), a partnership limited by shares (*société en commandite par actions*) and a private limited company (*société à responsabilité limitée*) which fulfil the following cumulative conditions:

(i) the company shall be a public interest entity (*i.e.* listed companies, banks, insurance or reinsurance companies or a company designated by Luxembourg as a public interest entity)

and

(ii) the company shall exceed at least two of the following three criteria on the balance sheet date and for two consecutive financial years:

- total balance sheet: EUR 20 million
- net turnover: EUR 40 million
- average number of full-time staff employed during the financial year: 250

and

(iii) the company shall exceed on the balance sheet date the criterion of the average number of 500 employees.

Disclosure obligation

Qualifying companies will be required to disclose relevant information on the two following key matters:

- non-financial information which includes, *inter alia*, policies, outcomes and risks, anti-corruption and bribery issues, as well as relevant non-financial key performance indicators relating to environmental, social and employee-related matters including a brief description of:
 - the business model
 - the policies pursued by the company in relation to these matters including due diligence processes implemented
 - the outcome of these policies
 - the principal risks related to these matters
 - non-financial key performance indicators relevant to the particular business

- diversity aspects (diversity at board or management level including relevant information on gender, qualifications, etc.). Regarding diversity information, listed companies are exempted (i) if they issue bonds only which are traded on a regulated market and (ii) if they have no shares traded on a regulated market or through a multilateral trading facility.

Subsidiaries may be exempted from such reporting obligations if they are included in the consolidated non-financial statement of another group parent company.

Companies may use relevant international, European or national guidelines to support their reporting.

Companies are permitted not to disclose non-financial information in certain circumstances (*i.e.* where such disclosure would be seriously prejudicial to the commercial position of the related company, provided that such omission does not prevent a fair and balanced understanding of the company's development, performance, position or the impact of its activity).

Furthermore, in principle, large companies and public interest entities which are active in the extractive industry or in the exploitation of primary forests shall draw up and publish an annual report on payments made to governments.

Publication requirement of non-financial and diversity information

Companies may include their non-financial information either in their annual management report or in a separate non-financial statement document.

In the event that the non-financial information is not included in the annual management report, it shall be filed with the Trade and Companies' Register together with the annual accounts and management report or it may be published on the company's website. In the latter case, the annual management report shall indicate that the non-financial information is published on the Company's website.

Where a company has no relevant policy in place in connection with one of the categories of non-financial information to be disclosed (*e.g.* no diversity policy applies), it shall include a clear explanation as to why this is the case in accordance with the "comply or explain" principle.

Independent auditor

The independent auditor must verify whether the non-financial statement has been provided.

Sanctions

A fine from EUR 500 to 25,000 may be imposed on directors or managers who have breached the publication requirement regarding non-financial and diversity information.

When?

The new obligations will be effective from the financial period starting on 1 January 2017.

Finally, please bear in mind that in January 2016, the European Commission published a consultation on non-binding guidelines for reporting of non-financial information by companies and is expected to publish the guidelines by 6 December 2016.

This publication is intended to provide information on recent legal developments and does not cover every aspect of the topics with which it deals. It was not designed to provide legal or other advice and it does not substitute for the consultation with legal counsel before any actual undertakings.

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