

Text der Stellungnahme des DRSC vom 14. März 2019 zum Entwurf der Europäischen Kommission „CONSULTATION DOCUMENT ON THE UPDATE OF THE GUIDELINES ON NON-FINANCIAL REPORTING“

Text of the ASCG's feedback from 14 March 2019 on the "CONSULTATION DOCUMENT ON THE UPDATE OF THE GUIDELINES ON NON-FINANCIAL REPORTING" exposed by the European Commission

1. Do you have any comments on Chapter 2 "How to use these guidelines" of the report?

We agree that climate change represents a significant threat and risk to companies' strategy, business models and future financial performance. Information about this risk and any mitigating effects arising from public policy decisions are therefore of utmost importance to all stakeholders. Therefore, we welcome the European Commission's strive for recommendations aiming at improving the companies' reporting on such matters by developing guidelines to assist preparers in meeting the requirements. However, we note that the draft annex to the non-binding guidelines includes a number of recommendations and interpretations that some perceive as going beyond the current NFRD requirements.

For example, Art. 19a of the NFRD states that the non-financial statement shall contain information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity. During the process of the NFRD's transposition into national legislation, we faced an intensive (and highly controversial) debate as to how the condition was to understand, whether information was material and would, thus, have to be reported. To our knowledge, most European member states (incl Germany) transposed the wording in the Directive literally, such that information must be reported if it is necessary for the understanding of *both*, economic aspects of the reporting entity ("undertaking's development, performance, position"), *and* the undertaking's impact on what is outside its economic sphere (e.g. environment, employees, society at large etc.). In contrast, the draft annex suggest that the disclosures proposed should be considered if climate aspects are material from *either* of these two perspectives, which might be seen as a contradicting Art. 19a.

Another example is the Commission's statement according to which companies should, to the "extent appropriate", consider their whole value chain when reporting on climate-related risks etc. In using such wording, the draft annex goes beyond the NFRD requirement, as recitals 6 and 8 of the NFRD maintain that any reporting requirement is framed by the condition of it being "relevant and proportionate". Whilst we acknowledge that the requirements in the NFRD may be understood in different ways, the draft annex should avoid giving the impression that there is only one appropriate understanding of the Directive. Rather, we suggest choosing more cautious wording to not change what clearly is required by the Directive (de lege lata), to then state what the Commission sees as leading the path to the future and constituting a desirable practice worth considering further (de lege ferenda).

Such inconsistencies might result in significant uncertainties, especially for preparers, and bear the risk of these not being considered useful and accepted throughout Europe. We therefore urge the Commission to reconsider the recommendations in this regard. Please see also our answers on questions 3, and 5.

2. Do you have any comments on Chapter 3.1 “Business Model” of the report?

None

3. Do you have any comments on Chapter 3.2 “Policies and Due Diligence Processes” of the report?

We support the guidance in the introductory paragraphs ahead of the detailed proposals for disclosures on page 14 of the draft, as the lead-in paragraphs provide additional guidance to the requirements of the NFRD, while remaining at a level that provides sufficient flexibility for entities. In contrast, the detailed disclosures proposed in table 2 go far beyond what we understand must be reported in order to comply with the NFRD. Although we acknowledge that many entities will define or are already defining own climate policy and associated targets and are willing to report on such; we think that a requirement for entities to consider (type 1) explaining the reasoning behind the selection of these targets is – notwithstanding the fact that such discussion being desirable – not required by the NFRD. In our view, the Commission should carefully review its proposals in the draft guideline against this background. Please also see our answer on question 5.

4. Do you have any comments on Chapter 3.3 “Outcomes” of the report?

None

5. Do you have any comments on Chapter 3.4 “Principal Risks and Their Management” of the report?

As already said in our answer on question 3, we think that some of the disclosures proposed clearly go beyond the requirements of the NFRD. Another example is the description of the company’s processes for identifying and assessing climate-related risks over the short, medium, and long term and how the company defines short, medium, and long term.

In addition, we note the Commission’s intention to put the TCFD proposals under the roof of Art. 19a of the NFRD. We acknowledge that Art. 19a of the NFRD refers to information necessary for understanding the economic aspects of the reporting entity (“undertaking’s development, performance, position”; please see our answer on question 1); however, the new core element of non-financial reporting under the NFRD is the information on how an entity’s activities impact its environment, including global climate change. In contrast, the TCFD recommendations focus on the opposite causal relation, i.e. “how the physical effects of climate change and the anticipated transition to a low-carbon and climate-resilient economy impact”

companies" (emphasis added). Whilst their specificity might be new, we would have viewed these recommendations being in line with a classic risk report where entities would report on risks that are material to their business. The requirement to disclose relevant information about material risks and their consequences, however, are better tied to Article 19 rather than 19a of the Directive.

We therefore fail to see how the TCFD's approach to recommend disclosure of impacts on the entity can be convincingly tailored to meet the NFRD's requirements, which focus not only on the impact on the entity's activity, but also of the entity's activity. We thus urge the Commission to carefully consider which elements of the proposed TCFD contents would sit better with requirements in Article 19 of the Accounting Directive rather than with the NFR amendments in Article 19a when updating the non-binding guidelines.

6. Do you have any comments on Chapter 3.5 "KPIs" of the report?

The draft annex contains an extensive list of KPIs to be considered by reporting entities when drafting their non-financial statement. Also, the disclosures proposed in the other chapters of the draft annex appear quite numerous. Whilst the European guidelines on non-financial reporting are labelled 'non-binding', we have been made aware that several stakeholders consider them quasi-mandatory. Therefore, we think that the aspect of decision-usefulness of financial reporting should be taken into account appropriately. We clearly see the risk that the sheer volume of disclosures to be made could easily reach a level that is counterproductive to the aim pursued. It would be a pity if the European Commission, with best intentions, contradicts the widely shared objectives of the IASB's Disclosure Initiative, a project aiming at enhancing entities' communication with investors and users. Hence, an clear emphasis on the "K"(ey) of KPIs seems advisable.

Furthermore, we think that in light of the number of disclosures proposed the question might be raised whether all disclosures on non-financial items shall be required to be made within companies' financial reports or whether these disclosures might not sit better with other means of company reporting, such as sustainability reporting. We acknowledge the ASCG has not developed an opinion on that question, and we concede that there are a number of knock-on issues to be considered, e.g. the development of integrated reporting; however, we think that the Commission should take this issue into account when drafting the final non-binding guidelines.

In addition, we believe that neither the green bond ratio nor the green debt ratio are meaningful figures in light of their objective, i.e. helping companies communicate how their low-carbon transition plan is supported by debt financing activities and how capital is raised for existing and new projects with climate benefits. This information might be misleading in certain circumstances, e.g. in case when a company's green activities are not financed by specific debt instruments or when green activities are financed by a mix of financing facilities with a large equity portion. Conceptually speaking, an asset-side-based ratio would be more appropriate in our view. However, it should be borne in mind that disclosures such as percentage number indicating investment (CapEx) or expenditures (OpEx) in the reporting year for assets or processes that support green products or services might contain commercially

sensitive information, so that the provision of those needs to be further investigated in order not to create competitive disadvantages for European companies in the global arena.

7. Do you have any comments on Annex I “Proposed disclosures for Banks and Insurance companies to the report?”

We note that Annex I – as well as chapter 3.5 – includes references to the green taxonomy to be developed by the European Commission. The Commission further acknowledges this taxonomy is still under preparation. Hence, a meaningful evaluation of the disclosures proposed is not possible at this stage.

8. Do you have any comments on Annex II “Mapping of NFRD requirements and TCFD recommended disclosures” to the report?”

None

9. Do you have any additional comments on the report as a whole?

In our comment letter to the Technical Expert Group on Sustainable Finance on their Report on Climate-related Disclosures (TEG), we addressed the different audiences underlying financial reporting on one hand, and the TCFD recommendations that are subject to the Commission’s draft annex to the non-binding guidelines on the other hand. We have copied the relevant section from our comment letter for your convenience below:

“In the same context, we note that in section 2 of the report (subsection 2.1) the TEG explicitly acknowledges the different reporting audiences underlying the NFRD on one hand, and the TCFD on the other. In our view, the TEG is right in quoting Recital 3 of the NFRD that it *“is intended to meet the needs of investors and other stakeholders as well as the need to provide consumers with easy access to information on the impact of businesses on society”* whereas the TCFD’s target audience is investors, lenders, and insurance underwriters. In our view, this difference also shows the different perspectives. However, we fail to see an appropriate solution or compromise presented in the TEG report, and we therefore recommend that this issue be addressed and considered by the European Commission in the course of developing the draft amendments to the non-binding guidelines.”

When discussing the Commission’s draft annex we noted that the draft does not contain any discussion about this issue. However, we do not think that the problem can be solved by not addressing it, as many constituents are aware of the fact that the audiences for financial reporting at large and for the TCFD recommendations are not identical. Therefore, we continue to urge the Commission to have this issue addressed in order to enhance the acceptance of the non-binding guidelines.