



To: Members of EP Legal Affairs Committee

3 December 2013

Dear Sir/Madam,

I am writing to you in view of the Legal Affairs Committee vote scheduled for 17 December on the Commission's proposal on disclosure of non-financial information.

European business is committed to the objective of transparency and credibility. More and more companies are disclosing information on their CSR activities. This is due to a growing understanding and belief in companies that CSR transparency and stakeholder engagement have or could have a positive return in terms of business performance and by giving a competitive edge on the market.

The Commission's proposal risks undermining the very principle that has made CSR successful – its voluntary and business-driven nature. This is what creates shared value for both society and companies. There is no clear evidence that increased regulation on reporting will boost CSR activities.

Furthermore, by stipulating concrete reporting obligations in many areas, the proposed directive would create bureaucratic and cost burdens for business, especially medium-sized ones. This is underestimated by the Commission, as they neglect the costs of setting-up the appropriate reporting mechanisms that many companies would be confronted with. Not to mention the costs associated with the mandatory external auditing of the information.

Notwithstanding the fundamental concerns European businesses have with this initiative, BUSINESSEUROPE and its members have actively engaged with MEPs to suggest amendments to the commission's proposal, which we believe would lead to improvements. We are pleased to see that some amendments in the legal affairs committee go in the right direction. However, others would further increase the obligations for business and are therefore not acceptable.



Please find in annex our views on the key issues for European business and voting recommendations.

Given our fundamental concerns about the commission's proposal, we hope that MEPs will avoid adding further obligations and achieve the best possible outcome for business.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. Beyrer', with a long, sweeping underline.

Markus J. Beyrer

## Annex

### Voting recommendations: EP Legal Affairs Committee Disclosure of non-financial information

| Issue                                    | Amendment no.                                | Voting recommendation |
|--|--|-----------------------|
| 1. Voluntary nature of CSR               | 42, 44, 45                                   | +                     |
| 2. Threshold and scope                   | 122, 123, 126, 144, 146, 161                 | +                     |
|  | 120, 125, 159, 163                           | -                     |
| 3. Separate non-financial statement      | 180  | +                     |
| 4. Disclosing information on risks       | 30 (paragraph 1a (c)), 38 (paragraph 1a (c)) | +                     |
| 5. Matters to report on                  | 122, 126, 181                                | +                     |
|  | 120, 128, 130-133, 166-7, 184-5, 200         | -                     |
| 6. Due diligence                         | 134, 182-3                                   | -                     |
| 7. Supply chain and complete value chain | 125, 163, 182, 185                           | -                     |
| 8. International frameworks              | 138-140, 172-4, 182-4, 200                   | -                     |
| 9. Country-by-country reporting          | 176, 178, 186, 203                           | -                     |

### Justification

1. Voluntary nature of CSR – we support amendments 44 and 45, which emphasise that CSR must remain voluntary, as stated in the European Parliament’s CSR report in February 2013. We agree that this is particularly important for SMEs and that this principle should be the basis for any changes to the Accounting directive. We also support amendment 42, rejecting the Commission’s proposal.

*Justification: Central to the success of CSR is its voluntary and business-driven nature that ensures shared value for both businesses and society. This implies that a company links its CSR activities to its core business, developing initiatives tailor-made to its specific situation. The decision to engage in CSR activities should therefore be taken by the company itself, based on its own convictions, its size, the specific nature of its business and the challenges it faces. We have fundamental concerns that the Commission’s proposal risks undermining these core principles and that there is no clear evidence that mandatory rules on disclosure of non-financial information will lead to companies automatically becoming more responsible and more competitive.*



2. Threshold and scope – we support amendments 122, 123, 126, 144, 146, 161 which limit the scope of the directive to listed companies or raise the thresholds regarding the balance sheet total and/or net turnover. We do not support amendments 120, 125, 159, 163, which broaden the scope of the directive to companies with 250 employees, or lower the thresholds regarding the balance sheet total and/or net turnover.

*Justification: Already with the commission's proposal, the new requirements would not only apply to large but also medium-sized companies, for which they would bring about an unjustified heavy cost and administrative burden. Extending to even smaller companies would only make this worse. Smaller and medium sized companies do not necessarily see the need or have the resources to meet these requirements and other means of reporting are often better suited to their local set-up.*

3. Separate non-financial statement – we support the principle of amendment 180 which allows companies (although referring only to public interest entities) to publish the non-financial statement separately to the management report, e.g. on the company's website. Amendments 123, 145, 161 also allow the non-financial statement to be published separately, however the need for a reference to be made in the management report is problematic.

*Justification: Reports based on existing frameworks are often published as stand-alone documents. Making these an integral part of the management report would lead de-facto to mandatory integrated reporting, whereas this is not common practice amongst all companies. Furthermore, including (or even referring in some cases) to a non-financial statement in the management report would make it mandatory to conduct a comprehensive audit of such reports. Not only would this be costly, it would also be inappropriate to treat non-financial in the same way as financial information.*

4. Disclosing information on risks – although we would have preferred this part to be deleted, as a second option, we support the elements related to disclosing risk in amendments 30 and 38. These allow companies to not disclose information on 'impending developments or matters in the course of negotiation', where in the opinion of members of the administrative, management and supervisory bodies, this would be 'seriously prejudicial to the interests of the undertaking'.

*Justification: Requiring the disclosure of information on risks would impose disclosure of sensitive business information which must remain confidential. Therefore companies should at least have the possibility to avoid disclosing such sensitive information.*

5. Matters to report on – we support amendments 122, 126, 181 which allow companies to choose the matters they report on. We do not support amendments 120, 128, 130-133, 166-7, 184-5, 200 which extend the list of topics or oblige companies to provide additional information, e.g. quantified key performance data.

*Justification: companies should be able to decide themselves which matters they report on and how they do so, in collaboration with their stakeholders. This avoids a box-ticking exercise and means that companies report on those matters which are material and relevant to them and their stakeholders in the most appropriate way.*



6. Due diligence – we do not support amendments 134, 182, 183 which introduce due diligence requirements in the directive, making them legally binding. If such a requirement is introduced, at the very most it should only concern reporting by those companies which have already implemented due diligence processes, as in amendments 30 (para 1a. (a)) and 38 (para 1a. (a)). It should not oblige companies to introduce such processes.

*Justification: Due diligence is at the core of major international frameworks, including the OECD guidelines and UN Guiding Principles. However the scope of due diligence requirements in these frameworks is completely different - for example, the OECD guidelines are voluntary and only for Multinational Enterprises, whereas the directive would be legally binding on all companies with more than 500 employees; the UN Guiding Principles has a narrower focus than the proposed directive, i.e. on human rights. Respecting due diligence means that tools need to be developed and embedded in companies' operations, whereas for many companies this is not yet the case. Therefore this would increase burdens on them.*

7. Supply chain/ complete value chain – we do not support amendments 125, 163, 182, 185 which introduce an obligation for companies to report on their supply chain or complete value chain.

*Justification: Large companies have thousands of suppliers/subcontractors, often in very complex supply chains. This means that the main contractor may not be in a position to ask suppliers or subcontractors to comply with their standards and in particular to monitor compliance. A company's value chain may include thousands of other companies, including suppliers, subcontractors and any other company which is involved in its delivery of products or services. For multinational companies this can mean across the globe. It is therefore not feasible for companies to comply with this.*

8. International frameworks – we do not support amendments 138-140, 172-4, 182-4, 200 which make it obligatory rather than optional for companies to rely on international frameworks when reporting.

*Justification: Many companies use the diverse range of international frameworks to guide them in reporting on their CSR activities. However, these frameworks are voluntary. Therefore it is not appropriate to make it a legal obligation at EU level to rely on them. Companies should also continue to be able to choose which frameworks are best suited to their CSR and reporting activities.*

9. Country-by-country reporting on tax issues – we do not support amendments 176, 178, 186, 203 which introduce country-by-country reporting on certain tax issues into the proposal. If such an amendment is introduced however, it would be preferable to include this as part of the review clause as in amendment 40.

*Justification: see separate joint letter on country-by-country reporting already circulated to JURI committee. The EU should not take a stand-alone approach on this issue, but focus on coordinating tax issues at international level.*