

ANEC proposed amendments to the draft Proposal for a Directive of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups COM/2013/0207 final - 2013/0110 (COD)

The suggested amendments below ensue from the attached ANEC position on Corporate Social Responsibility including comments on the proposed directive.

Proposed ANEC amendments

Please note that the ANEC suggested amendments are in *italics and underlined*.

<u>Proposal for a directive</u>	<u>Proposed ANEC Amendment</u>
<p>Preamble <i>Text Proposed by the Commission</i></p> <p>(6) In order to enhance consistency and comparability of non-financial information disclosed throughout the Union, companies should be required to include in their annual report a non-financial statement containing information relating to at least environmental matters, social and employee-related matters, respect for human rights, anti-corruption and bribery matters. Such statement should include a description of the policies, results, and the risks related to those matters.</p>	<p>In order to enhance consistency and comparability of non-financial information disclosed throughout the Union, companies should be required to include in their annual report a non-financial statement containing information relating to at least environmental matters, social and employee-related matters, respect for human rights, anti-corruption and bribery matters. Such statement should include a description of the policies, results <i><u>including appropriate general and (sub)sector specific indicators</u></i>, and the risks related to those matters.</p> <p><i><u>The indicators should be relevant for the enterprise in question; the reported figures should be comparable and allow benchmarking; it should be precisely defined how such indicators are measured, verified and reported.</u></i></p>

<p><u>Proposal for a directive</u></p>	<p><u>Proposed ANEC Amendment</u></p>
<p>Preamble</p> <p style="text-align: center;"><i>Text Proposed by the Commission</i></p> <p>(7) In providing this information, companies may rely on national frameworks, EU-based frameworks such as the Eco-Management and Audit Scheme (EMAS), and international frameworks such as the United Nations (UN) Global Compact, the Guiding Principles on Business and Human Rights implementing the UN "Protect, Respect and Remedy" Framework, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, the International Organisation for Standardisation (ISO) 26000, the International Labour Organization (ILO) Tripartite Declaration of principles concerning multinational enterprises and social policy, and the Global Reporting Initiative.</p>	<p><u>(7) In providing this information, companies may <i>should</i> rely on national frameworks, a European reporting framework including key performance indicators to be adopted using a Committee procedure. It may be inspired by existing EU-based frameworks such as the Eco-Management and Audit Scheme (EMAS) and, in particular, sectoral reference documents prepared in accordance with its Article 46, and international frameworks such as the United Nations (UN) Global Compact, the Guiding Principles on Business and Human Rights implementing the UN "Protect, Respect and Remedy" Framework, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, the International Organisation for Standardisation (ISO) 26000 <u>Guidance on social responsibility and ISO 14031 Environmental performance evaluation - Guidelines</u>, the International Labour Organization (ILO) Tripartite Declaration of principles concerning multinational enterprises and social policy, and the Global Reporting Initiative.</u></p>

<p><u>Proposal for a directive</u></p>	<p><u>Proposed ANEC Amendment</u></p>
<p>Article</p> <p style="text-align: center;"><i>Text Proposed by the Commission</i></p> <p style="text-align: center;">Article 1</p> <p style="text-align: center;">Amendments to Directive 78/660/EEC</p> <p>(1) Article 46 is amended as follows:</p> <p>Paragraph 1 is replaced by the following:</p> <p>'1. (a) The annual report shall include a fair review of the development and performance of the company's business and of its position, together with a description of the principal risks and uncertainties that it faces.</p> <p>(b) For companies whose average number of employees during the financial year exceeds 500 and, on their balance sheet dates, exceed either a balance sheet total of EUR 20 million or a net turnover of EUR 40 million, the review shall also include a non-financial statement containing information relating to at least environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including:</p> <p>(i) a description of the policy pursued by the company in relation to these matters;</p> <p>(ii) the results of these policies;</p> <p>(iii) the risks related to these matters and how the company manages those risks.</p> <p>Where a company does not pursue policies in relation to one or more of these matters, it shall provide an explanation for not doing so.</p> <p>In providing such information the company may rely on national, EU-based or international frameworks and, if so, shall specify which frameworks it has relied upon.</p> <p>(c) To the extent necessary for an understanding of the company's development, performance or position, the analysis shall include both financial and non-financial key performance indicators relevant to the particular business.</p> <p>(d) In providing its analysis, the annual report shall, where appropriate, include</p>	<p style="text-align: center;">Article 1</p> <p style="text-align: center;">Amendments to Directive 78/660/EEC</p> <p>(1) Article 46 is amended as follows:</p> <p>Paragraph 1 is replaced by the following:</p> <p>'1. (a) The annual report shall include a fair review of the development and performance of the company's business and of its position, together with a description of the principal risks and uncertainties that it faces.</p> <p>(b) For companies whose average number of employees during the financial year exceeds 500 and, on their balance sheet dates, exceed either a balance sheet total of EUR 20 million or a net turnover of EUR 40 million, the review shall also include a non-financial statement containing information relating to at least environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including</p> <p>(i) a description of the policy pursued by the company in relation to these matters;</p> <p>(ii) the results of these policies;</p> <p>(iii) the risks related to these matters and how the company manages those risks.</p> <p>Where a company does not pursue policies in relation to one or more of these matters, it shall provide an explanation for not doing so.</p> <p>In providing such information the company may rely on national, EU-based or international frameworks and, if so, shall specify which frameworks it has relied upon. <u>shall use the European non-financial reporting framework including general and (sub)sector specific key performance indicators to be adopted in form of implementing measures in accordance with Article aa</u></p> <p>(c) To the extent necessary for an understanding of the company's</p>

<p>references to and additional explanations of amounts reported in the annual accounts.'</p> <p>(b) Paragraph 4 is replaced by the following:</p> <p>'4. Where a company prepares a comprehensive report corresponding to the same financial year relying on national, EU-based or international frameworks and which covers the information provided for in paragraph 1(b), it shall be exempt from the obligation to prepare the non-financial statement set out in paragraph 1(b), provided that such report is part of the annual report.'</p>	<p>development, performance or position, the analysis shall include both financial and non-financial key performance indicators relevant to the particular business. <u>The indicators shall be relevant for the enterprise in question; the reported figures shall be comparable and allow benchmarking; it shall be precisely defined how such indicators are measured, verified and reported;</u></p> <p>(d) In providing its analysis, the annual report shall, where appropriate, include references to and additional explanations of amounts reported in the annual accounts.'</p> <p>(b) Paragraph 4 is replaced by the following:</p> <p>'4. Where a company prepares a comprehensive report corresponding to the same financial year relying on national, on <u>the European non-financial reporting framework in accordance with Article aa</u> national, the EU-based or international frameworks and which covers the information provided for in paragraph 1(b), it shall be exempt from the obligation to prepare the non-financial statement set out in paragraph 1(b), provided that such report is part of the annual report.'</p>
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<u>Proposal for a directive</u>	<u>Proposed ANEC Amendment</u>
<p>Article</p> <p><i>Text Proposed by the Commission</i></p> <p>Article 2</p> <p>Amendments to Directive 83/349/EEC</p> <p>Directive 83/349/EEC is amended as follows:</p> <p>(1) Article 36 is amended as follows:</p> <p>(a) Paragraph 1 is replaced by the following:</p> <p>'1. The consolidated annual report shall</p>	<p>Article 2</p> <p>Amendments to Directive 83/349/EEC</p> <p>Directive 83/349/EEC is amended as follows:</p> <p>(1) Article 36 is amended as follows:</p> <p>(a) Paragraph 1 is replaced by the following:</p> <p>'1. The consolidated annual report shall include a fair review of the development and performance of the business and of the position of the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and</p>

include a fair review of the development and performance of the business and of the position of the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face.

The review shall analyse in a balanced manner the development and performance of the business and the position of the undertakings included in the consolidation taken as a whole, consistent with the size and complexity of the business.

For parent undertakings of undertakings to be consolidated that together exceed an average number of 500 employees during the financial year, and, on their balance sheet dates, exceed either a balance sheet total of EUR 20 million or a net turnover of EUR 40 million, the review shall also include a non-financial statement containing information relating to at least environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including the following:

- (i) a description of the policy pursued by the company in relation to these matters;
- (ii) the results of these policies;
- (iii) the risks related to these matters and how the company manages those risks.

Where the undertakings included in the consolidation taken as a whole do not pursue policies in relation to one or more of these matters, the company shall provide an explanation for not doing so.

In providing such information the consolidated annual report may rely on national, EU-based or international frameworks and if so, shall specify which frameworks it has relied upon.

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The review shall analyse in a balanced manner the development and performance of the business and the position of the undertakings included in the consolidation taken as a whole, consistent with the size and complexity of the business.

For parent undertakings of undertakings to be consolidated that together exceed an average number of 500 employees during the financial year, and, on their balance sheet dates, exceed either a balance sheet total of EUR 20 million or a net turnover of EUR 40 million, the review shall also include a non-financial statement containing information relating to at least environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including the following:

- (i) a description of the policy pursued by the company in relation to these matters;
- (ii) the results of these policies;
- (iii) the risks related to these matters and how the company manages those risks.

Where the undertakings included in the consolidation taken as a whole do not pursue policies in relation to one or more of these matters, the company shall provide an explanation for not doing so.

In providing such information the company may ~~rely on national, EU-based or international frameworks and, if so, shall specify which frameworks it has relied upon.~~ shall use the European non-financial reporting framework including general and (sub)sector specific key performance indicators to be adopted in form of implementing measures in accordance with Article aa

To the extent necessary for an understanding of such development,

<p>To the extent necessary for an understanding of such development, performance or position, the analysis shall include both financial and non-financial key performance indicators relevant to the particular business.</p> <p>In providing its analysis, the consolidated annual report shall, where appropriate, provide references to and additional explanations of amounts reported in the consolidated accounts. '</p> <p>(b) The following paragraphs 4 and 5 are added:</p> <p>'4. Where a parent undertaking prepares a comprehensive report corresponding to the same financial year, referring to the whole group of consolidated undertakings, relying on national, EU-based or international frameworks and covering the information provided for in the third subparagraph of paragraph 1, the parent undertaking shall be exempt from the obligation to prepare the non-financial statement set out in the third subparagraph of paragraph 1, provided that such comprehensive report is part of the consolidated annual report.</p>	<p>performance or position, the analysis shall include both financial and non-financial key performance indicators relevant to the particular business.</p> <p>In providing its analysis, the consolidated annual report shall, where appropriate, provide references to and additional explanations of amounts reported in the consolidated accounts. '</p> <p>(b) The following paragraphs 4 and 5 are added:</p> <p>'4. Where a parent undertaking prepares a comprehensive report corresponding to the same financial year, referring to the whole group of consolidated undertakings, relying on <u>the European non-financial reporting framework in accordance with Article aa national, the EU-based or international frameworks</u> and covering the information provided for in the third subparagraph of paragraph 1, the parent undertaking shall be exempt from the obligation to prepare the non-financial statement set out in the third subparagraph of paragraph 1, provided that such comprehensive report is part of the consolidated annual report.</p>
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Justification

The "*relevance, consistency, and comparability*" of non-financial information can only be achieved if there is an obligatory common European reporting framework including key performance indicators adopted by a comitology procedure.

<p><u>Proposal for a directive</u></p> <p><i>Text Proposed by the Commission</i></p>	<p><u>Proposed ANEC Amendment</u></p> <p><u>New article 'aa'</u></p> <p><u>Implementing measures</u></p> <p><i><u>General and (sub)sector specific reporting requirements including the relevant key performance indicators shall be adopted in accordance with the examination procedure referred to in Article bb (2).</u></i></p>
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Justification

The "*relevance, consistency, and comparability*" of non-financial information can only be achieved if there is an obligatory common European reporting framework including key performance indicators adopted by a comitology procedure.

<p><u>Proposal for a directive</u></p> <p>Before current Article 3</p> <p><i>Text Proposed by the Commission</i></p>	<p><u>Proposed ANEC Amendment</u></p> <p><u>Proposal for new Article 'bb':</u></p> <p><u>Committee procedure</u></p> <p><i><u>1. The Commission shall be assisted by a committee in the development of general and (sub)sector specific reporting requirements including the relevant key performance. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.</u></i></p> <p><i><u>2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.</u></i></p>
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Justification

In order to allow transparency the indicators need to be established using a Comitology procedure, i.e. a Committee shall be established to assist the Commission in preparing implementing acts.

<p><u>Proposal for a directive</u> Before current article 3</p> <p><i>Text Proposed by the Commission</i></p>	<p><u>Proposed ANEC Amendment</u></p> <p>Proposal for new article 'cc':</p> <p>Consultation forum</p> <p><i><u>"The Commission shall ensure that, in the conduct of its activities, it observes, in respect of each implementing measure, a balanced participation of Member States' representatives and all interested parties concerned with non-financial reporting, such as industry, including SMEs and craft industry, trade unions, traders, retailers, importers, human and labour rights advocates, environmental protection groups and consumer organisations.</u></i></p> <p><i><u>These parties shall contribute, in particular, to defining and reviewing implementing measures covering reporting requirements including key performance indicators for one or more subject areas or (sub) sectors and to examining the effectiveness of the established market surveillance. These parties shall meet in a Consultation Forum. The rules of procedure of the Forum shall be established by the Commission."</u></i></p>
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Justification

In order to offer flexibility, increased transparency, and stakeholder involvement whilst setting an overarching, binding regulatory framework, this approach should make use of the regulatory model used in the eco-design of energy-related products (ErP) field.

In addition to a comitology procedure, a consultation forum should thus be established in line with article 18 of the eco-design directive for energy-related products (Directive 2009/125/EC).

<u>Proposal for a directive</u>	<u>Proposed ANEC Amendment</u>
<p>Before current Article 3</p> <p><i>Text Proposed by the Commission</i></p>	<p><u>Proposal for new article 'dd':</u></p> <p>Working plan</p> <p><u>"Having consulted the Consultation Forum referred to in Article cc, the Commission shall, not later than xx xxxxxx 2014 establish a working plan which shall be made publicly available. The working plan shall set out for the following three years an indicative list of non-financial reporting requirements including key performance indicators also covering sectors and sub sectors which are considered as priorities for the adoption of implementing measures. The working plan shall be amended periodically by the Commission after consultation with the Consultation Forum."</u></p>

Justification

Taking the eco-design directive for energy-related products (Directive 2009/125/EC) as a valid model, it is deemed a working plan should be established in line with article 16 of the above mentioned

<u>Proposal for a directive</u>	<u>Proposed ANEC Amendment</u>
<p>Article</p> <p><i>Text Proposed by the Commission</i></p>	<p><u>Proposal for new article 'ee':</u></p> <p>Market surveillance</p> <p><u>Member States shall take all necessary measures to ensure that the non-financial information provided by corporations is correct, non-biased, not deceptive and in line with the adopted implementing measures.</u></p> <p><u>For this purpose Member States shall establish or designate market surveillance authorities which shall be given the powers and entrusted with the resources and means necessary to perform appropriate checks on an adequate scale and with adequate</u></p>

	<p><i>frequency.</i></p> <p><i><u>Member States shall report on their market surveillance activities and controls concerning non-financial information to the Commission every year. The information reported shall include statistics regarding the number of controls carried out and the results of the controls and shall be communicated to all Member States and the public electronically and, where appropriate, by other means.</u></i></p> <p><i><u>Member States shall establish appropriate mechanisms to ensure that members of the public can complain about incorrect or misleading non-financial information and that such complaints are carefully investigated and, if appropriate, corrective action is taken.</u></i></p>
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Justification

In order for CSR policies to bring true benefit to the society, it is important that Member States conduct market surveillance and verify the correctness of the information provided by corporations.

Market surveillance has a role to play for enforcement of legal requirements that support public interest, achieving both consumer protection and a level playing field for businesses.

About ANEC

ANEC is the European consumer voice in standardisation, defending consumer interests in the processes of technical standardisation and conformity assessment, as well as related legislation and public policies. ANEC was established in 1995 as an international non-profit association under Belgian law and is open to the representation of national consumer organisations in 33 countries. ANEC is funded by the European Union and EFTA, with national consumer organisations contributing in kind. Its Secretariat is based in Brussels. www.anec.eu