



# **Position Paper on Corporate Social Responsibility Reporting**

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**Suggested changes to the Proposal for a EU Directive 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**

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## Executive Summary

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This paper analyses the proposal of the European Commission for an EU directive on 'disclosure of non-financial and diversity information by certain large companies and groups'<sup>1</sup>. It highlights what we believe to be an inadequate approach: one that lacks ambition and refers to questionable guidelines which we doubt can lead to proper reporting.

We recommend instead to develop a demanding European approach on corporate accountability. This would include requirements and indicators that could be gradually expanded, supported by detailed reporting requirements.

We make proposals for this alternative approach: the establishment of a European set of indicators which should cover a broad range of sustainability subjects. The indicators should be relevant, measurable, robust, comparable and fit for benchmarking.

We suggest the Ecodesign approach as the regulatory model to be used, and so include a proposal for reference to the comitology procedure in the directive. We also propose the establishment of a stakeholder consultation forum to facilitate transparency and balanced representation in the process.

Finally, in order for any regulatory measures to have real practical impact, the directive would need to put forward robust market surveillance mechanisms, and include provisions for the stricter enforcement of legislation, in order to ensure compliance with the relevant legislation and standards.

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<sup>1</sup> COM/2013/0207 final - 2013/0110 (COD) <http://tinyurl.com/oojyf23>

## General assessment – "anything goes"

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The Commission proposal fails in its objective *"To increase the transparency of certain companies, and to increase the relevance, consistency, and comparability of the non-financial information"* as outlined in the explanatory memorandum accompanying the draft Directive. The proposal gives corporations essentially a *carte blanche* to report whatever they want, at whatever level of detail they deem appropriate. In the language used by the Commission this reads: *"Companies may use existing national or international reporting frameworks and will retain their margin of manoeuvre to define the content of their policies, and flexibility to disclose information in a useful and relevant way"*. We do not doubt that companies will be able to create *"useful"* information to optimise their businesses and in terms of image-building – but we doubt very much that this will result in any meaningful information for the society at large, or lead to increased transparency. Ensuring *"relevance, consistency, and comparability"* of non-financial information based on *"margin of manoeuvre"* and *"flexibility"* cannot work. These are contradictory targets.

The Commission regrets *"that only ~ 2500 out of the total ~ 42000 EU large companies formally disclose non-financial information on a yearly basis"*. Further, the Commission rightly considers that *"overall the information disclosed by companies does not adequately meet the needs of users"*. However, it remains entirely unclear why the quality of the reports should improve when it is left to the discretion of business to select the information to be provided, including indicators. If these almost 40.000 companies that do not yet disclose non-financial information follow the shining example of the 2.500 who do report, albeit without clear-cut rules and obligations, the result will be little more than self-advertising.

Consequently, it is difficult to see that the proposed measure will *"increase the company's accountability and performance"* – rather it will boost greenwash and profit-making through pseudo-sustainable products and services. Hence, the proposed Directive has a potential to amplify market distortions (promotion of unsustainable practices) rather than *"increase..., the efficiency of the Single Market"*.

A meaningful approach to non-financial reporting requires that:

- the chosen indicators are relevant for the enterprise in question;
  - the reported figures are comparable and allow benchmarking;
  - it is defined precisely how such indicators are measured, verified and reported;
- and
- market surveillance is effective and routes exist for citizens to complain about misleading claims.

## Referenced guidelines –

### EMAS, GRI, Global Compact and Co.

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The Commission proposal requires that certain large companies disclose a statement, including material information relating to at least environmental, social, and employee-related matters; respect of human rights, anti-corruption and bribery aspects. As noted above, corporations would be free to write whatever they want. In doing so they "*may (!) rely on national, EU-based or international frameworks and, if so, shall specify which frameworks it has relied upon*". This means that first, the frameworks are only optional and, second, that a pick-and-choose approach is promoted.

The preamble gives examples for the kind of frameworks the Commission has in mind: "*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*". However, none of these frameworks provides clear-cut rules for reporting, nor provides meaningful, measurable, robust and comparable indicators that are fit for benchmarking.

As an example, ANEC - with its partners - challenged the EMAS scheme a long time ago<sup>2</sup>. EMAS could not be seen as "*a system of excellence based on substantive performance requirements and meaningful sector-specific indicators which would allow for performance comparisons and benchmarking*". Instead, EMAS was judged to be a system which leaves it "*up to the organisations themselves to determine the performance levels, and even heavy polluters may qualify for registration under the scheme. It therefore remains doubtful whether EMAS compliance can be taken as proof of better than average environmental performance, let alone be seen as a label of excellence*".

When the Commission presented a proposal for a revised EMAS scheme in 2008 (EMAS III), the obligation was introduced to make use of general "core indicators", both in the environmental statement and environmental performance report. These indicators covered energy, materials, water, waste, biodiversity, and emissions. In addition to the total amounts (e.g. of water use per company and year), normalised

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<sup>2</sup> Joint ANEC/ECOS/EEB position on "Commission proposal for a revised EMAS (EMAS III)", October 2008 <http://tinyurl.com/nrddxby>

figures relating to economic output - total annual gross value added (for big companies) and total annual turnover or number of employees (for small organisations) - was required. This was an unusable approach.

In the position paper cited, it was stated: *"However, generic indicators such as total energy consumption are normally not meaningful as they do not allow for reasonable comparisons between organisations. Even if such data are related to the physical or monetary output, including the value added or number of employees, they say very little, and could be equated with the results of comparing apples and pears. A prerequisite for serious assessments of performance and benchmarking is to compare comparable activities or processes"*. One can, for instance, compare the energy intensities of the production of 1 tonne of cement and the related pollutant emissions, but not the energy consumptions of different manufacturers of different sizes with different product portfolios (let alone the energy consumption of other producers or service providers).

Indications of total tonnages are also promoted by the Global Reporting Initiative (GRI) guidelines. It may be that the popularity of these guidelines among industry results from them not allowing performance comparisons and benchmarking. However, they serve as a good embellishment in CSR or sustainability reports, and give these reports a touch of seriousness and objectivity. Apart from that, these numbers – which cannot be verified - are pointless. The GRI presents itself as a "multi-stakeholder initiative". However, a look at its "organisational stakeholders" reveals that it is controlled by big industry and big consultancies. It seems to be "multi" – but rather in terms of multinational corporations.

The United Nations (UN) Global Compact has been heavily criticised by NGOs, both for its lack of substance and the lack of verification of company statements claiming to adhere to its principles. According to Professor Jean Ziegler, it is just a front: *"I think that we have to fight the Global Compact, not only criticise it, because it is a public relations operation of the big multinational companies"*(Inter Press News Service, 6 July 2007). In fact, its principles are nebulous and vague. They are essentially only a commitment to obey the most basic human rights - and just touch upon some other issues, such as environment. But does the absence of e.g. human rights abuses, child labour and forced labour make a "sustainability hero"? And does this *increase "the company's accountability and performance" or "the efficiency of the Single Market"*? We believe not. In fact, non-adherence of basic human rights is a criminal act.

The second pillar of the UN Guiding Principles on Business and Human Rights – the CSR pillar – addresses "the corporate responsibility to respect human rights". It is very much in line with the human rights principles of the Global Compact, i.e. it does not require more than the observance of the most basic human rights as outlined in the International Bill of Human Rights, and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work (ILO core conventions). The former are



more or less vague principles (many of which not directly or not at all applicable to corporations), the latter represent just the absolute minimum covering eight core conventions, which address collective bargaining, forced labour, child labour and discrimination. This means that most relevant labour protection issues are NOT addressed such as exploitation at work (salaries, working hours, holidays, health and safety, etc.). Indeed, one can perfectly comply with the UN Guiding Principles (or Global Compact) and let people work 7 days a week, for 80-100 hours a week and a starvation wage. Is this a step forward? Is this the meaning of "corporate social responsibility"?

The OECD Guidelines for Multinational Enterprises are not much different as regards human and labour rights, referring essentially to the same source documents. Although a broader range of issues is covered (e.g. environments, consumer interests) they also provide maximum freedom for interpretation by corporations. Their vague recommendations are tailored mostly to operations in developing countries. Recommendations concerning disclosure are as weak as the requirements in the Commission proposal. Their essence is that enterprises "*should ensure timely and accurate information is disclosed on all material matters*" and "*should apply high quality standards for accounting, and financial as well as non-financial disclosure, including environmental and social reporting where they exist*". In other words, full freedom to report whatever is deemed appropriate. In fact, "high quality standards" for non-financial disclosure do not exist.

ISO 26000 Guidance on social responsibility follows the same approach. Even if one acknowledges that a broad range of issues is covered by the guidelines, business chooses the level of ambition as regards performance and reporting. The level of ambition is low. Following the guideline does not mean that the level of company performance is better than average (particularly in Europe) or that reports are useful.

Taking these points together, it remains doubtful whether references to these documents are of any use in ensuring proper reporting of non-financial information, including environment and employee matters. Hence, a specific European approach to corporate accountability needs to be developed, based on substantive requirements and meaningful indicators.

## The alternative approach

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Although the documents reviewed above may, of course, be used as source of inspiration<sup>3</sup>, the only meaningful alternative is to skip the reference to them and to establish a European set of indicators which should cover a broad range of subjects

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<sup>3</sup> See also below the EMAS sectoral documents as a good example for the development of suitable indicators

in the field of sustainability. Such indicators must be relevant, measurable, robust, comparable and fit for benchmarking. Given that ALL existing reporting guidelines are of questionable value, we need first of all a broad discussion on useful reporting requirements and key performance indicators.

It is important these are not only generic but also (or in some areas), preferentially sector specific (such as the fleet consumption of cars) or even sub-sector specific (such as energy intensity of the production of 1 tonne of steel). This is particularly relevant in the fields of consumer and environmental protection. Such indicators can partly be taken from the EU BREF (BAT reference) documents.

Although critical of EMAS III, ANEC welcomed<sup>4</sup> the EU decision in 2009 to promote best environmental management practice through developing Sectoral Reference Documents and sector-specific comparable indicators.

In 2012, ANEC [welcomed](#) the latest draft of the EMAS Reference Document, 'Best environmental management practices' (BEMPs) in the construction sector, developed by the Institute for IPTS of the European Commission Joint Research Centre. This also took into account the findings of the [ANEC study on environmental & health-related criteria for buildings](#). It provides an overview of the common specific indicators for the construction sector and derived benchmarks.

Other, very valuable, approaches are available.

For instance, ISO 14031 on environmental performance evaluation<sup>5</sup> has been revised. To our delight a clause (4.2.2.6) on "Selecting sector-specific operational performance indicators for comparison" has been inserted (with significant input from ANEC). This document makes clear that comparisons of operational performance indicators (OPIs), based on quantities per unit of time relating to an entire organization or its sub-units, are usually not possible.

Sometimes, the use of such indicators is justified by arguing that an organisation can monitor performance changes over time. But, according to the draft ISO standard, this is possible only to a limited extent: *"Similarly, while monitoring OPIs over a period of time can identify performance trends for an organization, increases or decreases of environmental burdens are not necessarily related to performance changes alone, but may be due to other reasons such as organizational expansion/reduction of production or outsourcing/relocations of certain activities. Hence, even internal performance comparisons within the same organization present difficulties that need to be taken into account when doing comparisons"*.

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<sup>4</sup> At the time of the EMAS revision, we called for the indicators to be developed in a transparent and timely manner, with a clear obligation on the European Commission to come up with working plans based on agreed priorities and targets.

<sup>5</sup> ISO 14031:2013 "Environmental management — Environmental performance evaluation — Guidelines", August 2013



Hence, the ISO standard suggests using environmental efficiency indicators at the process or product level (e.g. quantity of energy per product unit) for comparisons: *"These relative values will allow - under specific, controlled conditions - qualified comparisons of processes, products or services from different organizations, as well as for the identification of benchmarks, and best and worst practices or ratings"*. By contrast, *"comparisons of the overall environmental performance of whole organizations are normally difficult or even impossible to achieve"*. In addition, it is suggested to focus on the important issues: *"Furthermore, comparisons can be made easier by focusing only on the most significant aspects - the Key Performance Indicators (KPIs)"*. Such indicators should be based on a consensus among interested parties. A methodology to develop sector specific environmental indicators is provided, as well as examples to illustrate the approach. It constitutes a suitable starting point for the development a European methodology and a suitable starting point for European reporting obligations.

In conclusion, ANEC recommends the European Commission initiates a broad discussion concerning:

- a European approach on corporate accountability;
- suitable requirements and indicators that can be gradually expanded;
- corresponding detailed reporting requirements.

Our suggested way forward is to incorporate a Comitology procedure to establish requirements for non-financial reporting in the form of implementing measures - including key performance indicators covering all sustainability areas - following a (long term) work programme and broad stakeholder consultations.

## ANEC proposals for amendments

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### Committee procedure

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. In particular, the examination procedure referred to in Article 5 of Regulation (EU) No 182/2011 should be used.

Proposal for new article: "General and (sub)sector specific reporting requirements including the relevant key performance indicators shall be adopted by the Committee referred to in article xx in accordance with the examination procedure referred to in Article 5 of Regulation (EU) No 182/2011".

To this end, a paragraph must be inserted to establish a committee.

Proposal for new article: "The Commission shall be assisted by a Committee. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011".

#### Consultation forum

This approach should furthermore make use of the regulatory model used in the eco-design of energy-related products (ErP) field. A model often promoted as very successful as it offers flexibility, increased transparency, and stakeholder involvement while setting an overarching, binding regulatory framework.

An important part of this ErP approach is the setting up of a consultative stakeholder forum, which allows stakeholders to provide their contribution on the implementation of the Directive. A similar approach should be adopted in this area.

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

Proposal for new article:

"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.

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."

#### Working Plan

Further, a Working Plan should be established in line with article 16 of the eco-design directive for energy-related products (Directive 2009/125/EC).

Proposal for new article:

"Having consulted the Consultation Forum referred to in Article xx, 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.”

### Market surveillance

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.

As ANEC states in its position on product market surveillance<sup>6</sup>, also in the area of corporate governance adequate funding of market surveillance activities is central, there are certainly different financing options that could and should be explored.

Proposal for new article:

“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.

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 frequency.

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.

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.

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<sup>6</sup> ANEC-Orgalime Position paper “Market Surveillance Regulation: A brave step towards an effective pan-European market surveillance system” <http://tinyurl.com/p64obce>

## **Conclusion**

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ANEC believes company disclosure of social and environmental information can be improved only if a solid proposal for business reporting in this area is put forward. We give here concrete contributions to the EU institutions, and fellow stakeholders, to start a discussion on the establishment of a European set of relevant, measurable, robust, comparable indicators, able to cover a broad range of sustainability aspects and fit for benchmarking. We draw attention to the prior need to have a broad discussion on useful reporting requirements and key performance indicators.

We wish this to be a suitable starting point for the development a satisfactory European methodology for European business reporting on non-financial information.

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## About ANEC

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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.



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