

17 September 2013

Mr. Richard Howitt  
Member of the European Parliament  
Bât. Altiero Spinelli  
13G246  
60, rue Wiertz / Wiertzstraat 60  
B-1047 Bruxelles/Brussel

Re: Comments on COM (2013) 207

Dear MEP Howitt,

Thank you very much for the opportunity to comment on COM (2013) 207 on non-financial reporting. The Institute for Human Rights and Business strongly supports the draft Directive and particularly welcomes the specific references to: “respect for human rights” and the references to the Guiding Principles on Business and Human Rights Implementing the UN “Protect, Respect, Remedy” Framework and the OECD Guidelines for Multinational Enterprises.

You asked for specific comments on the draft so we have included those below in track changes, as requested, with comments to support our suggestions.

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#### Recitals

(7) *In providing this information, companies may ~~rely~~ refer to ~~on~~relevant 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 to help them frame their reporting and decide on relevant issues but must provide information on the actual application of these frameworks.*

**Comment [MW1]:** It is not clear what “rely” means here – the frameworks should be a reference to which reports can refer. The Directive will have failed in its important mission if it is interpreted to mean that companies can meet the Directive requirements by reporting only their perceived adherence to these frameworks.

Article 1, Amendments to Directive 78/660/EEC

Directive 78/660/EEC is amended as follows:

Article 46 is amended as follows:

Paragraph 1 is replaced by the following:

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 and link to a publicly available version of the policy pursued by the company in relation to these matters;
- (ii) the results of these application of these policies to the undertaking and its material business relationships,
- (iii) the external risks (-for society and the environment) and internal risks (for the undertaking and its workers) related to these matters and how the company manages those risks including the steps taken to eliminate or mitigate such risks.

Where the undertakings, included-including those 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 refer to its application of the relevant national, EU-based or international frameworks and if so, shall Please see the comment above on rely v. refer. specify which-the frameworks it has relied upon which it has based its approach, provided the relevant framework covers the topic.

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.

In providing its analysis, the consolidated annual report shall, where appropriate, provide references to and additional explanations of amounts reported in the consolidated accounts. '

Article 46a is amended as follows:

In paragraph 1, the following point (g) is added:

'(g) a description of the company's diversity policy for its administrative, management and supervisory bodies with regard to aspects such as age, gender, geographical diversity, racial or ethnic origin, educational and professional background, the objectives of this diversity policy, how it has been implemented and the results in the reporting period. If the company

**Comment [MW2]:** Given the increasing shift to using temporary /agency workers, we would suggest "workforce matters" or "employee and worker matters"

**Comment [MW3]:** We agree with this phrasing

**Comment [MW4]:** Presumably this has not been asked for because it is assumed that companies will not have a publicly available policy. But is there a good reason that companies should not have publicly available policies? Or at least should not make public relevant parts of internal policies that cover the matters addressed in the Directive? Without publication of policies, it will be more difficult for stakeholders to understand whether companies are meeting their internal standards.

**Comment [MW5]:** We would suggest switching (ii) and (iii) as logically a company would have a policy, assess its risks, apply the policy and get to the results. The current order seems to disassociate the related actions that must take place to get to the results of the process.

**Comment [MW6]:** Isn't this clarification needed to make sure that comply and explain extends to all applicable companies

**Comment [MW7]:** Please see the comment above on rely v. refer.

**Comment [MW8]:** We are concerned that a company may just refer to EMAS, which would be relevant for environment but not for other areas. This may be overly cautious but would just foreclose companies taking the most expeditious route to its explanations.

**Comment [MW9]:** Is there a good reason why this does not reflect Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin?

*has no such policy, the statement shall contain a clear and reasoned explanation as to why this is the case. '*

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We hope this has been helpful and would be pleased to continue the discussion or provide any further information.

Institute for Human Rights and Business