GUIDANCE FOR PWYP MEMBERS & OTHER ORGANISATIONS RESPONDING

- ***To respond go to this webpage and proceed to 'Respond to the questionnaire' (orange box)***
- ***A Transparency Register number is not required to fill in the question. What is required is an EU login which you will be prompted to create or enter when preceding to the questionnaire.***
- ***All content highlighted in green below has received PYWP sign-off and is intended as a model for your organisation to use when responding to the online questionnaire.***
- ***When editing the content to reflect your organisation's priorities, please keep in mind the 5000 character limit for open questions (this includes spaces, line breaks and other hidden characters so you should aim to stay under 4900 characters in MS Word or on a Google doc).***
- ***Please note it is not compulsory to respond to all questions.***
- ***The deadline for submission is Thursday 11 June 2020, midnight CEST (Brussels time).***

CONTENT

0. ABOUT YOU

Guidance highlighted in yellow

- Are you (or do you represent companies that are) SMEs? 'No'
- 'Field of activity or sector': choose 'Not applicable' (question intended for private sector)
- Choose the option 'My organisation is a user of non-financial information (or represents such organisations'
- Are you (or do you represent companies that are) currently under the scope of the provisions of the NFRD? 'No'
- Publication privacy settings: choose 'Public' unless there are any specific reasons why you would not want your response to be attributed to your organisation

1. QUALITY AND SCOPE OF NON-FINANCIAL INFORMATION TO BE DISCLOSED

The feedback received from the online public consultation on corporate reporting carried out in 2018 suggests that there are some significant problems regarding the non-financial information currently disclosed by companies pursuant to Directive 2014/95/EU ("the Non-Financial Reporting Directive" or NFRD) Likewise, ESMA's 2018 Activity Report gathers evidence that shows there is significant room for improvement in the disclosure practices under the NFRD.

Question 1. To what extent do you agree or disagree with the following statements about possible problems with regard to non-financial reporting?
Please rate as follows: 1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree

- The lack of comparability of non-financial information reported by companies pursuant to the NFRD is a significant problem. = 5
- The limited reliability of nonfinancial information reported by companies pursuant to the NFRD is a significant problem. = 5
- Companies reporting pursuant to the NFRD do not disclose all relevant 10 i. ii. iii. Iv. non-financial information needed by different user groups. = 5

Article 19a of the Accounting Directive *(which was introduced into the Accounting Directive by the NFRD) currently requires companies to disclose information about four non-financial matters, if deemed material by the particular company:* ***environment, social and employee issues, human rights, bribery and corruption****. These correspond to the "sustainability factors" defined in Article 2(24) of Regulation (UE) 2019/2088 on sustainability related disclosures in the financial services sector.*

Question 2. **Do you consider that companies reporting pursuant to the NFRD should be required to disclose information about other non-financial matters in addition to those currently set-out in Article 19a?**
Please specify (no more than three matters).

1. Environmental, social and human rights impact assessments at project level for companies active in the natural resource extraction sector (oil, gas and mining) and other high risk sectors

2. Disclosure of contracts between a state entity and company, licenses and other legal agreements which provide the terms (including non-financial terms) attached to the exploration, prospection, discovery, development, extraction and sale of oil, gas and mineral resources

3. Disclosure of corporate structure and ownership: in addition to the list of consolidated subsidiaries disclosed with annual consolidated financial accounts, disclose all non-consolidated entities, as well as all participation in joint ventures and related percentages

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For each of the four non-financial matters identified in Article 19a of the Accounting Directive, and subject to the company's own materiality assessment, ***companies are required to disclose information about their business model, policies*** *(including implemented due diligence processes),* ***outcomes, risks and risk management (****including risks linked to their business relationships),* ***and key performance indicators (KPIs)*** *relevant to the business.*

Question 3.: Are there additional categories of non-financial information related to a company's governance and management procedures, including related metrics where relevant, (for example, scenario analyses, targets, more forward-looking information, or how the company aims to contribute to society through its business activities) that companies should disclose in order to enable users of their reports to understand the development, performance, position and impacts of the company?
Please specify (no more than three).

1. Time-bound sustainability targets and performance indicators and annual report on company performance against these targets/indicators.

2. Identification of sustainability and human rights matters addressed by the Board in the previous year and decisions, including in particular delegated actions to management bodies.

3. Description of remuneration of executive directors, and how it is affected by their performance against sustainability and human rights criteria. Criteria should be fully disclosed, as well as expected and actual performance.

Question 4.: **In light of the importance of intangibles in the economy, do you consider that companies should be required to disclose additional non-financial information regarding intangible assets or related factors (e.g. intellectual property, software, customer retention, human capital, etc.)?**

● Yes
● No
● Don't know / no opinion / not relevant

In addition to the provisions of the NFRD, several other EU legislative acts require disclosures of sustainability-related information for financial sector entities:

- *The Regulation on prudential requirements for credit institutions requires certain banks to disclose ESG risks as of 28 June 2022.*
- *The Regulation on sustainability-related disclosures in the financial services sector requires financial market participants to disclose their policies on the integration of sustainability risks in their investment decision-making process and the adverse impacts of investment decisions on sustainability factors, as of 10 March 2021.*

- *The Regulation establishing a framework to facilitate sustainable investment (the Sustainable Finance Taxonomy) creates new reporting obligations including for companies subject to the NFRD, starting in December 2021.*

Question 5.: **To what extent do you think that the current disclosure requirements of the NFRD ensure that investee companies report the information that financial sector companies will need to meet their new disclosure requirements?**

- Not at all
- To some extent but not much
- To a reasonable extent
- To a very great extent
- Don’t know / no opinion / not relevant

Question 6.**: How do you find the interaction between different pieces of legislation (You can provide as many answers as you want)**

- It works well
- There is an overlap
- There are gaps
- There is a need to streamline
- It does not work at all
- Don’t know / no opinion / not relevant

Question 7.: In order to ensure better alignment of reporting obligations of investees and investors, should the legal provisions related to non-financial reporting define environmental matters on the basis of the six objectives set-out in the taxonomy regulation: (1) climate change mitigation; (2) climate change adaptation; (3) sustainable use and protection of water and marine resources; (4) transition to a circular economy (5) pollution prevention and control; (6) protection and restoration of biodiversity and ecosystems?

- Yes
- No
- Don’t know / no opinion / not relevant

Please provide any comments or explanations to justify your answers to questions 1 to 7.
5000 character(s) maximum including spaces and line breaks

Q2: Extractive companies (oil, gas and mining) have high market capitalization and are exposed to extraordinary sustainability risk given their social, environmental and human rights impacts in the countries where they extract resources and on the climate. Mining companies are also of strategic importance for the energy transition as ‘transition minerals’ will play a crucial role in achieving climate neutrality. To allow for informed decisions by investors based on ESG performance and for meaningful engagement by civil society organisations with these companies on their impacts, extractive companies should be required to disclose environmental and social impact assessments, and associated environmental and social management plans and reports, for each extraction project, as well as contracts, licenses and other legal agreements related to natural resources, and their full corporate structure as well as their participation in joint ventures.

Information contained in environmental and social impact assessments (ESIAs), management plans and reports at project level, in combination with information on payments to governments that extractive companies must disclose as mandated by Chapter 10 of the Accounting Directive and Article 6 of the Transparency Directive, is material to assess the performance of extractive companies from a double materiality perspective. The IMF also calls for publication of ESIAs and associated management plans and reports, which is crucial for transparency and especially for accountability for impacts on communities affected by extraction. ESIAs also contain important information about stakeholder engagement. In high risk sectors such as natural resource extraction, it is essential to ensure inclusive multi-stakeholder assessment processes that enable meaningful participation of affected communities, with due regard for gender dynamics and the views of minority and marginalized groups, in particular indigenous communities. Minorities' and indigenous peoples' legal and customary rights must be protected throughout the assessment and management plan implementation process, including free, prior and informed consent (FPIC) where applicable. It is key therefore that companies disclose their policies surrounding FPIC.

Contract transparency and disclosure of beneficial ownership are mandated by the Extractive Industries Transparency Initiative (EITI) Standard (2019), which the EU seeks to promote in accordance with Recitals 44-45 and Art. 48 of the Accounting Directive. Contract disclosure within the EITI is required starting January 1, 2021, applying to any contracts "granted, entered into, or amended" as of that date. In the extractive industries, contracts between a state entity and a company, including licenses and other legal agreements which provide the terms attached to the exploration, prospection, discovery, development, extraction and sale of oil, gas and mineral resources, are crucial parts of the legal framework that may determine taxes and other government revenues, climate-related commitments, sub-national fiscal transfers, audit rights, infrastructure and barter arrangements, community consultation requirements and social spending. This information is material to civil society and investors from a double materiality perspective.

Corporate ownership disclosures are essential to good corporate and resource governance in the extractive sector. Oil, gas and mining operations are particularly vulnerable to illicit financial flows - which can be constituted through the use of shell companies located in tax havens. Fiscal leakages can have serious social and human rights impacts, particularly in low income resource rich countries where funding for essential services is dependent on revenues from natural resource extraction. The legislation should mandate that extractive companies disclose all subsidiary companies they directly or indirectly own.

Q3: Extractive companies, given their tremendous impact on the climate, should be required to disclose their Scope 1, 2 and 3 emissions and to set Paris Agreement compatible emissions targets based on scientifically sound methodologies such as those developed by the TCFD. This obligation should be included in the Level 1 legislation. Targets should be based on existing standards and be scientifically sound. Companies should disclose methodologies used to determine targets.

Q4: Companies should disclose additional non-financial information regarding intangible assets or related factors. Related party charges for intangible assets, such as intellectual property, are a risk for transfer mis-pricing. Human capital disclosure can demonstrate discrimination in employment, e.g. local employees versus expatriates or gender discrimination.

2. STANDARDISATION

A requirement that all companies falling within the scope of the NFRD report in accordance with a common non-financial reporting standard may help to address some of the problems identified in section 1 (comparability, reliability and relevance).

Question 8. **In your opinion, to what extent would a requirement on companies to apply a common standard for non-financial information resolve the problems identified?**
● Not at all
● To some extent but not much
● To a reasonable extent
● To a very great extent
● Don't know / no opinion / not relevant

Question 9. In your opinion, is it necessary that a standard applied by a company under the scope of the Non-Financial Reporting Directive should include sector-specific elements?
● Yes
● No
● Don't know / no opinion / not relevant

Question 10. To what extent would the application of one of the following standards or frameworks, applied on its own, resolve the problems identified while also enabling companies to comprehensively meet the current disclosure requirements of the Non-Financial Reporting Directive, taking into account the double-materiality perspective (See section 4)?
Please rate as follows:
1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

- Global Reporting Initiative = 2
- Sustainability Accounting Standards Board = 2
- International Integrated Reporting Framework = 1

10.1 Do you consider that other standard(s) or framework(s), applied on their own, would resolve the problems identified while also enabling companies to comprehensively meet the current disclosure requirements of the NFRD?
● Yes
● No
● Don't know / no opinion / not relevant

10.2 Please specify which other standard(s) or framework(s) you consider, applied on their own, would resolve the problems identified while also enabling companies to comprehensively meet the current disclosure requirements of the NFRD, and to what extent:
Please rate as follows:

1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

Please specify other framework or standard (no more than three.)
1.
2.
3.

On 5 December 2019, the Economic and Financial Affairs Council adopted conclusions on deepening the Capital Markets Union, in which it invited the Commission to "consider the development of a European non-financial reporting standard taking into account international initiatives".
Most existing frameworks and standards focus on individual or a limited set of non-financial issues. Examples include the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), the UN Guiding Principles Reporting Framework (human rights), the questionnaires of the CDP (formerly the Carbon Disclosure Project), and the standards of the Carbon Disclosure Standards Board (CDSB). Several approaches have also been developed at EU level in the environmental area, including the Organisation Environmental Footprint and reporting under the Eco-Management and Audit Scheme (EMAS).

Question 11. If there were to be a common European non-financial reporting standard applied by companies under the scope of the NFRD, to what extent do you think it would be important that such a standard should incorporate the principles and content of the following existing standards and frameworks:
Please rate as follows:
1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

- Global Reporting Initiative = 3
- Sustainability Accounting Standards Board = 3
- International Integrated Reporting Framework = 2
- Task Force on Climate-related Financial Disclosures (TCFD) = 3
- UN Guiding Principles Reporting Framework (human rights) = 4
- CDP = 3
- Carbon Disclosure Standards Board (CDSB) = 3
- Organisation Environmental Footprint (OEF) = /
- Eco-Management and Audit Scheme (EMAS) = 2

11.1 Do you consider that the principles and content of other existing standard(s) or framework(s) should be incorporated in a potential common European non-financial reporting standard?

- Yes
- No
- Don't know / no opinion / not relevant

11.2 Please specify the existing standard(s) or framework(s), whose principles and content should be incorporated in a potential common European non-financial reporting standard, and to what extent:
Please rate as follows:
1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

***Please specify other framework or standard (no more than three.)**

1. Extractive Industries Transparency Initiative (EITI) 2019 Standard = 3

2. IMF Fiscal Transparency Code (FTC) - Pillar IV on natural resource revenue management (2019) = 3

3. Responsible Mining Index (RMI) = 3

[skip Question 12 about cost to companies reporting under the NFRD]

Small and Medium-Sized Enterprises (SMEs) often do not have the technical expertise nor resources necessary to prepare reports in accordance with state-of-the-art, sophisticated standards. This may imply that requiring SMEs to apply the same standards as large companies may be a disproportionate burden for SMEs.
At the same time, many SMEs are under increasing pressure to provide certain non-financial information to other businesses, in particular if they are suppliers of large companies. In addition, financial institutions are increasingly likely to request certain non-financial information from companies to whom they provide capital, including SMEs. In this respect, SMEs that do not provide non-financial information may experience a negative impact on their commercial opportunities as suppliers of larger companies or on their access to capital, and may not be able to benefit from new sustainable investment opportunities.

Question 13. **In your opinion, would it be useful for there to be a simplified standard and/or reporting format for SMEs?**
● Yes
● No
● Don't know / no opinion / not relevant

Question 14. To what extent do you think that a simplified standard for SMEs would be an effective means of limiting the burden on SMEs arising from information demands they may receive from other companies, including financial institutions?
● Not at all
● To some extent but not much
● To a reasonable extent
● To a very great extent
● Don't know / no opinion / not relevant

Question 15. If the EU were to develop a simplified standard for SMEs, do you think that the use of such a simplified standard by SMEs should be mandatory or voluntary?

● Mandatory
● Voluntary
● Don't know / no opinion / not relevant

In the responses to the Commission's public consultation on public corporate reporting carried out in 2018, just over half of the respondents believed that integrated reporting could contribute to a more efficient allocation of capital and agreed that the EU should encourage integrated reporting.

Question 16. In light of these responses, to what extent do you agree that the body responsible for developing a European non-financial reporting standard should also have expertise in the field of financial reporting in order to ensure "connectivity" or integration between financial and non-financial information?

● Not at all
● To some extent but not much
● To a reasonable extent
● To a very great extent
● Don't know / no opinion / not relevant

Question 17. The key stakeholder groups with an interest in and contributing to the elaboration of financial reporting standards have historically been investors, preparers of financial reports (companies) and auditors / a c c o u n t a n t s . To what extent to do you think that these groups should also be involved in the process of developing a European non-financial reporting standard?

Please rate as follows:
1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

- *Investors = 4*
- *Preparers = 4*
- *Auditors/Accountants = 3*

Question 18. In addition to the stakeholders referred to in the previous question, to what extent do you consider that the following stakeholders should be involved in the process of developing a European non-financial reporting standard?

Please rate as follows:
1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

- Civil society representatives/NGOs = 4
- Academics = 3

18.1 Do you consider that other stakeholder(s) should be involved in the process of developing a European non-financial reporting standard?

● *Yes*

● *No*
● *Don't know / no opinion / not relevant*

18.2 Please specify which other stakeholder(s) you consider should be involved in the process of developing a European non-financial reporting standard and to what extent:
*Please specify other categories (no more than three).
Please rate as follows:
1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

1. Civil society organisations from countries where natural resources are extracted, including representatives of women's organisations, indigenous peoples and other marginalised groups = 4
2. Representatives of organizations that manage other international reporting frameworks = 3
3.

Question 19. To what extent should the following European public bodies or authorities be involved in the process of developing a European non financial reporting standard?
Please rate as follows:
1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

- European Securities Markets Authority (ESMA) = 3
- European Banking Authority (EBA) = 3
- European Insurance and Occupational Pensions Authority (EIOPA) = 3
- European Central Bank (ECB) = 2
- European Environment Agency (EEA) = 4
- Platform on Sustainable Finance = 4

19.1 Do you consider that other European public body/ies or authority/ies should be involved in the process of developing a European non-financial reporting standard?

- Yes
- No
- Don't know / no opinion / not relevant

Please specify other types of European public bodies or authorities that you consider should be involved in the process of developing a European non-financial reporting standard (no more than three).
Please rate as follows:
1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

1.
2.
3.

National accounting standards-setters of several EU Member States are represented in the European Financial Reporting Advisory Group (EFRAG), which acts as the EU's voice and technical advisor in relation to financial reporting.

Question 20.: To what extent do you consider that the following national authorities or bodies should be involved in the process of developing European non-financial reporting standards?

Please rate as follows: 1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4=to a very great extent

- National accounting standards-setters = 2
- Environmental authorities = 2

20.1 Do you consider that other type of national authorities or bodies should be involved in the process of developing a European non-financial reporting standard?

● Yes
● No
● Don't know / no opinion / not relevant

Please specify which other type of national authorities or bodies you consider should be involved in the process of developing a European non-financial reporting standard and to what extent:(no more than three).
Please rate as follows: 1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

1.
2.
3.

Please provide any comments or explanations to justify your answers to questions 8 to 20.
! 5000 character(s) maximum including spaces and line breaks

Q9: It is essential to the success of the Commission's sustainable finance action plan and of the European Green Deal to apply detailed and specific non-financial reporting standards for high-risk sectors, in particular for the extractive industries. Oil, gas and mining companies have high market capitalization and are exposed to extraordinary sustainability risk given their social, environmental and human rights impacts in the countries where they extract resources and on the climate, as well as high levels of corruption compared to most other sectors. Mining companies are also of strategic importance for the energy transition, because 'transition minerals' will play a crucial role in achieving climate neutrality.

Q11: The UNGP outline a universally accepted methodology for human rights due diligence and should be reflected in the future common European non-financial reporting standard. For the extractive sector (oil, gas and mining) the following international standards should also inform the European standard:
- The GRI is developing a sector standard for oil, gas, and coal (https://www.globalreporting.org/standards/work-program-and-standards-review/development-of-sector-standard-oil-gas-and-coal)
- The SASB has several standards for the extractives and mineral processing sector (oil & gas, coal, iron & steel, metals & mining, construction metals)

Q11.1 & 11.2: The principles and content of the following frameworks should be incorporated in a common European non-financial reporting standard:
1. The Extractive Industries Transparency Initiative (EITI) is the global standard to promote the open and accountable management of oil, gas and mineral resources. The EITI Standard requires the disclosure of information, including increasingly non-financial information, along the extractive industry value chain from the point of extraction, to how revenues make their way through the government, and how they benefit the public. The 2019 EITI Standard represents a further evolution in transparency, providing more information to stakeholders for analysis, public debate and decision making. It now requires disclosure of any contracts and licenses granted, entered into or amended from 2021 - these may include climate-related commitments, community consultation requirements, social spending and other non-. financial elements. There are also new requirements on environmental reporting and gender equality.

2. The 2019 natural resource revenue management pillar (Pillar IV) of the IMF's Fiscal Transparency Code (FTC) provides an important disclosure framework for the extractive sector, including for non-financial information. It covers:
- contract transparency: publication of contracts is now an established international norm, reflecting an important shift in extractive industry governance;
- contract allocation: the code stresses the importance of open contracting procedures for license allocation and calls for the identification of beneficial owners of companies holding licenses;
- project-level reporting: project-level reporting is considered to be an established international norm and provides critical information on the economic contribution of specific extractive projects;
- commodity trading: the code recognizes the importance of transparency in payments to governments related to commodity trading (the sale of oil, gas and minerals), which has traditionally been subject to limited oversight and susceptible to corruption and governance risks;
- environmental and social impact assessments (ESIAs): the code calls for publication of ESIAs and accompanying management plans and reports; such information is crucial for communities affected by extraction and enables the assessment of ESG performance against targets.

3. The Responsible Mining Index (RMI) Framework is the basis for the Responsible Mining Foundation's evidence based assessment of large-scale mining companies' policies and practices on economic, environmental, social and governance (EESG) issues (https://2020.responsibleminingindex.org). The RMI Framework sets out, from the perspective of society, expectations of mining companies and, in alignment with other international initiatives, EESG issues on which mining companies can be expected to report publicly. Emphasis is on reporting that follows open data principles and includes project-disaggregated data as well as information on corporate-level policies, systems and actions. Themes covered include economic development, business conduct, life-cycle management, community well-being, working conditions and environmental responsibility. The RMI Framework is used by

investors, mining companies, civil society and other stakeholders to inform and guide efforts towards stronger transparency and more responsible practices.

3. APPLICATION OF THE PRINCIPLE OF MATERIALITY

The NFRD requires companies to disclose information "to the extent necessary for an understanding of the development, performance, position and impact of [the company's] activities." This materiality principle implies that companies reporting pursuant to the NFRD must disclose (i) how sustainability issues may affect the development, performance and position of the company; and (ii) how the company impacts society and the environment. This is the double-materiality perspective.4 The two "directions" of materiality are distinct although there can be feedbacks from one to the other. For example, a company that with severe impacts on the environment or society may incur reputational or legal risks that undermine its financial performance.
'Material' information is defined in Article 2(16) of the Accounting Directive as "the status of information where its omission or misstatement could reasonably be expected to influence decisions that users make on the basis of the financial statements of the undertaking. The materiality of individual items shall be assessed in the context of other similar items." This definition is geared towards financial reporting, which is principally intended to serve the needs of investors and other creditors. By contrast, non-financial information serves the needs of a broader set of stakeholders, as it relates not only to the increasing impact of non-financial matters on the financial performance of the company, but also to its impacts on society and the environment. This may imply the need to provide an alternative definition of materiality for application in the context of non-financial reporting, or at least additional guidance on this issue.

Question 21. **Do you think that the definition of materiality set-out in Article 2 (16) of the Accounting Directive is relevant for the purposes of determining which information is necessary to understand a company's development, performance and position?**
● Not at all
● To some extent but not much
● To a reasonable extent
● To a very great extent
● Don't know / no opinion / not relevant

Question 22. **Do you think that the definition of materiality set-out in Article 2 (16) of the Accounting Directive is relevant for the purposes of determining which information is necessary to understand a company's impacts on society and the environment?**
● Not at all
● To some extent but not much
● To some extent but not much
● To a reasonable extent
● To a very great extent
● Don't know / no opinion / not relevant

Question 23. Is there a need to clarify the concept of 'material' non-financial information?
● Yes
● No

● Don’t know / no opinion / not relevant

Question 23.1 If you do think there is a need to clarify the concept of ‘material’ non-financial information, how would you suggest to do so?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method

The legislation should introduce a definition of materiality based on the elements suggested hereafter as well as a list of pre-defined material issues for high-risk sectors such as natural resources extraction.

The non-financial materiality assessment should be based on risks to people, society and the environment, independently of risks to business. The legislation should identify material impacts across financial and non-financial capitals (human, natural, social and cultural), geographic scales and time horizons. It should also require companies to consider the cumulative impacts that emerge over time and in combination with activities of other actors. It should consider material impacts caused by the company directly as well as through its business relationships. The framework should include both quantifiable impacts and those that cannot or should not be quantified ; and consider who bears the costs and benefits of these impacts. Impacts that cannot be quantified should be included in the overall analysis, using qualitative assessment techniques. The legislation should explicitly require companies to report on their negative impacts as well as positive contributions.

The extractive sector is associated with a wide range of impacts, that can be of a massive scale. Oil, gas and mining projects can generate severe negative impacts on people and the environment. Because of the sector’s high exposure to such risks, the legislation should require all extractive companies to report on a default set of specific environmental, social, human rights and governance-related issues that would be material to any extractive company of any size. The Responsible Mining Index Framework is one of the frameworks that should be used to define these issues (see answer to 11 above and accompanying comments).

Question 24. **Should companies reporting under the NFRD be required to disclose their materiality assessment process?**

- Yes
- No
- Don’t know / no opinion / not relevant

Please provide any comments or explanations to justify your answers to questions 21 to 24:
5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Q24: The legislation should require companies to disclose their materiality assessment process, in addition to the actual reporting. It should detail which sustainability issues have been considered material by the reporting company and - importantly - those issues that were not deemed material and the reasons for this.

The non-financial materiality assessment should be based on risks to people, society and the environment, independently of risks to business. As the definition of non-financial materiality should be extended to encompass the way companies' activities impact non-financial stakeholders, companies should meaningfully consult with such stakeholders including their own employees, subcontractors, suppliers, unions and CSOs including representatives of marginalised groups and indigenuous peoples. This is particularly important for extractive companies. The consultation process should be clearly described. Companies should disclose how they engage meaningfully with their stakeholders, state which stakeholders and the result of such engagement, any actions in progress, and issues not yet resolved.

Disclosure on the materiality assessment process should also clearly outline the company's approval process followed: executive committee approval and board endorsement in particular.

4. ASSURANCE

The NFRD requires that the statutory auditor or audit firm checks whether the non-financial statement has been provided if a firm falls within the scope of the Directive.
Article 34 of the Accounting Directive requires that the financial statements are audited, and that the statutory auditor or audit firm express an opinion whether the management report (i) is consistent with the financial statements for the same financial year; and (ii) has been prepared in accordance with the applicable legal requirements. Article 34 of the Accounting Directive also requires the statutory auditor or audit firm to state whether it has identified material misstatements in the management report and to give an indication of the nature of such material misstatements. However, the non-financial statement published pursuant to the NFRD – whether contained in the management report or a separate report – is explicitly excluded from the scope of Article 34 of the Accounting Directive. Consequently, the NFRD does not require any assurance of the content of the non-financial statement.

Question 25. **Given that non-financial information is increasingly important to investors and other users, are the current differences in the assurance requirements between financial and non-financial information justifiable and appropriate?**

- No, not at all
- To some extent but not much
- To a reasonable extent
- Yes, to a very great extent
- Don't know

Question 26. **Should EU law impose stronger assurance requirements for non-financial information reported by companies falling within the scope of the NFRD?**

Yes
No
Don't know

There are two types of assurance engagement a practitioner can perform:

- Reasonable assurance reduces the risk of the engagement to an acceptably low level in the given circumstances. The conclusion is usually provided in a positive form of expression and states an opinion on the measurement of the subject matter against previously defined criteria.
- Limited assurance engagements provide a lower level of assurance than the reasonable assurance engagements. The conclusion is usually provided in a negative form of expression by stating that no matter has been identified by the practitioner to conclude that the subject matter is materially misstated.

Question 27. **If EU law were to require assurance of non-financial information published pursuant to the NFRD, do you think that it should require a reasonable or limited assurance engagement on the non-financial information published?**
Reasonable
Limited
Don't know

Question 28. **If EU law were to require assurance of non-financial information published pursuant to the NFRD, should the assurance provider assess the reporting company's materiality assessment process?**
Yes
No
Don't know

Question 29.: **If assurance of non-financial information was required by EU law, should the assurance provider be required to identify and publish the key engagement risks, their response to these risks and any related key observations (if applicable)?**
Yes
No
Don't know

Question 30.: **If assurance of non-financial information was required by EU law, do you think that assurance engagements should be performed based on a common assurance standard?**
Yes
No
Don't know

If you answered yes in reply to the previous question, please explain whether there is an existing assurance standard that could be used for this purpose or whether a new standard would need to be developed.
5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Assurance standards for non-financial and sustainability reporting are much needed but not yet established and therefore need to be developed. Development of a new standard should be undertaken as a matter of urgency by an EU-wide/international multi-stakeholder group involving representatives of the public, private and third sectors (civil society) and independent experts under the leadership of one or more suitably qualified organisations.

Useful references:
- Global Reporting Initiative, The external assurance of sustainability reporting, 2013 (https://www.globalreporting.org/resourcelibrary/GRI-Assurance.pdf),
- Sustainability Reporting Assurance: Creating Stakeholder Accountability Through Hyperreality?, 2019 (https://www.researchgate.net/publication/336040587_Sustainability_Reporting_Assurance_Creating_Stakeholder_Accountability_Through_Hyperreality).

Question 31.: Do you think that an assurance requirement for non-financial information is dependent on companies reporting against a specific non-financial reporting standard?

Yes
No
Don't know

[skip Question 32 about cost of assurance to companies reporting under the NFRD]

Please provide any comments or explanations to justify your answers to questions 25 to 32.

The type of assurance required should be different according to the type of non-financial information. For high-risk sectors such as the extractive industries, reporting against specific KPIs based on a well defined methodology and with reasonable assurance against a new developed standard should be the norm.

5. DIGITISATION

The EU has introduced a structured data standard, the European Single Electronic Format (ESEF) under the Transparency Directive. With effect from 1 January 2020 listed companies in the EU shall report their annual financial reports in XHTML (audited financial statements, management report and issuer's responsibility statements). Additionally, if the consolidated financial statements are prepared in IFRS, the XHTML document should also be tagged using iXBRL elements specified in the ESEF taxonomy. This allows the information to be machine-readable. This is expected to produce a number of benefits, including cost saving for users of annual financial reports, greater speed, reliability and accuracy of data handling, improved analysis, and better quality of information and decision-making.
Additionally, the Commission is exploring opportunities to establish a single access point for public corporate information. In this respect, the Commission expects the High-level Forum on CMU to examine this topic and formulate recommendations from the Capital Markets angle in the coming months.

Question 33.: To what extent do you agree or disagree with the following statements regarding digitalisation of non-financial information?
Please rate as follows: 1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree

- It would be useful to require the tagging of reports containing non-financial information to make them machine-readable. = 5
- The tagging of non-financial information would only be possible if reporting is done against standards. = 5
- All reports containing non-financial information should be available through a single access point. = 5

Question 34.: Do you think that the costs of introducing tagging of non-financial information would be proportionate to the benefits this would produce?

- Not at all
- To some extent but not much
- To a reasonable extent
- To a very great extent
- Don't know / no opinion / not relevant

Question 35. Please provide any other comments you may have regarding the digitalisation of sustainability information:
5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please provide any comments or explanations to justify your answers to questions 33 to 35:
5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Non-financial information should be published in an open, machine-readable and human-readable format such as iXBRL in a central EU repository that provides full and free public access to the information. iXBRL is suitable for non-financial reporting as well as for financial data, is machine-readable and human readable, and reports can be printed off for people without internet access to read.

6. STRUCTURE AND LOCATION OF NON-FINANCIAL INFORMATION

The default requirement of the NFRD is that companies under scope shall include their non-financial statement in their annual management report. However, the NFRD also allows Member States to allow companies to disclose the required non-financial information in a separate report under certain conditions, and most Member States took up that option when transposing the Directive. Companies can be allowed by national legislation to publish such a report up to six months after the balance sheet date. The publication of non-financial information in a separate report has a number of consequences, including:
- Separate reports that include non-financial information are out of the legal mandate of the national competent authorities, whose mandate over periodic reports is limited to the annual and semi-annual financial reports (which include the management report).
- Separate reports that include non-financial information are not required to be filed in the Officially Appointed Mechanisms (OAMs) designated by Member States pursuant to Article 21(2) of the Transparency Directive.

Question 36.: **Other consequences may arise from the publication of the non-financial statement as part of a separate report. To what extent do you agree with the following statements:**
1= not at all, 4= to a very great extent, 5 = don't know

- The option to publish the non-financial statement as part of a separate report creates a significant problem because the non-financial information reported by companies is hard to find (e.g: it may increase search costs for investors, analysts, ratings agencies and data aggregators). = 4
- The publication of financial and non-financial information in different reports creates the perception that the information reported in the separate report is of secondary importance and does not necessarily have implications in the performance of the company. = 4

Question 37.: **Do you believe that companies should be required to disclose all necessary non-financial information in the management report?**

- Yes
- No
- Don't know / no opinion / not relevant

Question 38.: **If companies are allowed to publish the required non-financial information in a report that is separate from the management report, to what extent do you agree with the following approaches?**
Please rate as follows: 1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree

- Legislation should be amended to ensure proper supervision of information published in separate reports. = 5
- Legislation should be amended to require companies to file the separate report with Officially Appointed Mechanisms (OAMs). = 5
- Legislation should be amended to ensure the same publication date for management report and the separate report. = 5

Question 38.1 Please provide any comments regarding the location of reported non-financial information:
5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method

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The management report, including the non-financial statement, aims to provide a company's stakeholders with the information necessary to understand the company's development, performance, position and impact. Some non-financial information is also reported in the corporate governance statement, which is also part of the management report.

Question 39.: **Do you consider that the current segregation of non-financial information in separate non-financial and corporate governance statements within the management report provides for effective communication with users of company reports?**

- Not at all
- To some extent but not much
- To a reasonable extent
- To a very great extent
- Don't know / no opinion / not relevant

Please provide any comments or explanations to justify your answers to questions 36 to 39:
5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It is highly preferable if companies disclose all necessary information in the management report. The critical information should be disclosed in the management report in any case. However, if a company needs to report additional extensive information this can be done in a separate document. The legislation should therefore clarify which minimum information needs to be included in the management report, but company's disclosure obligations should not be necessarily limited in this regard.

7. PERSONAL SCOPE (WHICH COMPANIES SHOULD DISCLOSE)

The NFRD currently applies to large Public-Interest Entities (PIEs) with more than 500 employees. In practice this means large companies with securities listed in EU regulated markets, large banks (whether listed or not) and large insurance companies (whether listed or not) – all provided that they have more than 500 employees.
The Accounting Directive defines large undertakings as those that exceed at least two of the three following criteria:
(a) balance sheet total: EUR 20 000 000;
(b) net turnover: EUR 40 000 000;
(c) average number of employees during the financial year: 250.
Some Member States have extended the personal scope of the NFRD by lowering the threshold to 250 employees, in effect capturing all large PIEs.
Companies that are a subsidiary of another company are exempt from the reporting requirements of the NFRD if their parent company publishes the necessary non-financial information at consolidated level in accordance with the NFRD.
There are a number of potential arguments to support the extension of the personal scope of the NFRD:
- Changes in the legislative framework: following the adoption of the Regulation on sustainability-related disclosure in the financial services sector and of the Taxonomy Regulation, investors may require non-financial information from a broader range of investees in order to comply with their own sustainability-related reporting requirements.
- Large unlisted companies can have significant impacts on society and the environment. There may therefore be no a priori reason to differentiate between listed and non-listed companies in this respect. In addition, the difference in treatment between listed and non-listed companies in this regard may serve as

a disincentive for companies to become listed, and therefore undermine the attractiveness of capital markets.
- Exempting PIEs that are subsidiaries limits the information about impacts on society and the environment, thus undermining the ability of stakeholders of such exempted subsidiaries to hold them accountable for their impacts on society and the environment, especially at local and national level.

Question 40. If the scope of the NFRD were to be broadened to other categories of PIEs, to what extent would you agree with the following approaches?
Please rate as follows: 1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree

- Expand scope to include all EU companies with securities listed in regulated markets, regardless of their size. = 5
- Expand scope to include all large public interest entities (aligning the size criteria with the definition of large undertakings set out in the Accounting Directive: 250 instead of 500 employee threshold). = 5
- Expand scope to include all public interest entities, regardless of their size. = 5

Question 41. **If the scope of the NFRD were to be broadened to non-PIEs, to what extent would you agree with the following approaches?**
Please rate as follows: 1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree

- Expand the scope to include large non-listed companies. = 5
- Remove the exemption for companies that are subsidiaries of a parent company that reports non-financial information at group level in accordance with the NFRD. = 5
- Expand the scope to include large companies established in the EU but listed outside the EU. = 5
- Expand the scope to include large companies not established in the EU that are listed in EU regulated markets. = 5
- Expand scope to include all limited liability companies regardless of their size. = 3

Question 42. **If non-listed companies were required to disclose non-financial information, do you consider that there should be a specific competent authority in charge of supervising their compliance with that obligation?**
- Yes
- No
- Don’t know / no opinion / not relevant

Question 42.1 If you consider that there should be a specific competent authority in charge of supervising non-listed companies' compliance with the obligation of disclosing non-financial information, please specify who in your opinion should carry out this task (National Competent Authorities, European Supervisory Authorities, other...) and how:
5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The most logical and simple approach would be to extend the mandate of the financial regulators already required to monitor the sustainability disclosure requirement for listed companies (including ESMA at EU level), and ensure they have a similar mandate for non-listed companies.

Due to the nature of their activities, credit institutions and insurance undertakings have larger balance sheets than non-financial corporations. Hence, the vast majority of such institutions will exceed the balance sheet threshold in the definition of large undertakings set-out in the Accounting Directive. Moreover, the application of some public disclosure requirement of EU prudential regulation for credit institutions and insurance undertakings is defined based on various size thresholds.
For example:
- the Regulation on prudential requirements for credit institutions and investment firms includes in its definition of large credit institutions those with a total value of assets equal to or greater than EUR 30 billion;
- the same Regulation defines small and non-complex institutions as those that have EUR 5 billion or less total assets;
- the consultation paper published by EIOPA in October 2019 proposes to revise article 4 thresholds of Solvency II (below which entities are excluded from the scope of Solvency II), doubling the thresholds related to the technical provisions (from EUR 25M provisions to EUR 50M) and allowing Member States to set the threshold referring to premium income between the current EUR 5M and until a maximum of EUR 25M.

Question 43.: **To what extent do you agree with the following statements relating to possible changes of the personal scope of the NFRD for financial institutions?**
Please rate as follows: 1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree

- The threshold criteria for determining which banks have to comply with the NFRD provisions should be different from those used by Non-Financial Corporates. = 3
- The threshold criteria for determining which insurance undertakings have to comply with the NFRD provisions should be different from those used by Non-Financial Corporates = 3.

Please provide any comments or explanations to justify your answers to questions 40 to 43:
5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Q40: In regards to the extractive industries, smaller companies should not receive reporting exemptions. Smaller companies are generally exposed to greater equity risk than larger issuers and often take on greater risks due to the nature of their operations. Smaller companies are commonly involved during the exploration phase of a project which generally carries substantial risks, including both geological risk and often high risk engagement with host governments on financial and contract considerations--the initial “deal making” stage during which the risk for corruption is much higher than at later stages. Due to the nature of the extractive industries and the role that small companies play, it is critical that smaller companies are included because they often take on greater risk in their operations.

Q41: Large non-listed companies should be required to report because they may have major social and environmental impacts. In high risk sectors, such as oil, gas and mining, medium-sized companies should also be obliged to disclose material sustainability risks and impacts.

8. SIMPLIFICATION AND REDUCTION OF ADMINISTRATIVE BURDENS FOR COMPANIES

[skip Question 44 about cost to companies reporting under the NFRD]

The majority of Member States have transposed the NFRD requirements into national legislation making very few changes to the wording of the legal provisions. Therefore, in the majority of the national legal frameworks, companies are required to comply with national legislation that is quite high level, not very prescriptive and do not require the use of any particular reporting standard.

Question 45.: To what extent do you agree with the following statements?
Please rate as follows: 1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree

- Companies reporting pursuant to the NFRD face uncertainty and complexity when deciding what non-financial information to report, and how and where to report such information. = 5
- Companies are under pressure to respond to individual demands for non-financial information from sustainability rating agencies, data providers and civil society, irrespective of the information that they publish as a result of the NFRD. = 5
- Companies reporting pursuant to the NFRD have difficulty in getting the information they need from business partners, including suppliers, in order to meet their disclosure requirements. = Don't know

Please provide any comments or explanations to justify your answers to questions 44 to 45:
5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A significant body of literature concludes that increases in financial transparency yield lower cost of capital for firms.The positive association between transparency and lower cost of capital holds true for the disclosure of information about impacts on the environment and society . There is compelling evidence that firms' disclosures of climate change risk significantly lowers their cost of equity, particularly when users of that information deem it material. These findings are bolstered by a robust literature on the effects of Corporate Social Responsibility (CSR) and CSR reporting, which finds that firms that report on socially responsible practices have higher valuation and lower risk. In addition to improving issuers' relationship with prospective investors, the disclosure of non-financial information is critical in helping companies establish positive relations with communities surrounding their operations. By being transparent on their environmental, social and governance performance, companies enhance their social license to operate.

Experience with country-by-country reporting by extractive companies helps shed light on potential benefits and costs incurred when companies adapt to new disclosure regimes. Reporting experience has shown that the disclosures imposed by Chapter 10 of the Accounting Directive and article 6 of the Transparency Directive are relatively low cost. For instance, Total S.A. currently discloses payments for the largest number of identifiable projects of any reporting company. In its most recent payments-to-governments report, Total disclosed payments for 155 identifiable projects. In a comment to the US SEC dated February 17, 2020, Total states that the "internal cost for this reporting is low, in the region of $200,000 per year. Regarding our external auditors, beyond the first year when Total paid a one-off remuneration of $100,000, there is no additional cost as it is now integrated in their global remuneration with no specific cost." Total has not reported any risk of, or actual, competitive harm as a result of its project-level payment disclosures since it began reporting its payments in 2016.

The transparency obligations imposed on extractive companies by the Accounting and Transparency Directives can have a positive impact on EU companies' competitiveness. Evidence from the UK Government's 2018 Post Implementation Review (PIR) of the Reports on Payments to Governments Regulations supports this. Based on survey responses from 32 companies covered by the regulations, the review report concluded that "this type of reporting does not disadvantage company business interests, including their relationships with governments" and noted that one company had already experienced a positive impact on its competitive position (UK Department for Business, Energy & Industrial Strategy, 2018, 'The Reports on Payments to Governments Regulations 2014, PIR Report http://www.legislation.gov.uk/uksi/2014/3209/pdfs/uksiod_20143209_en.pdf).

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:
The maximum file size is 1 MB.
You can upload several files.
Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

1. Extractive Industries Transparency Initiative, The EITI Standard 2019 (June 2019) https://eiti.org/files/documents/eiti_standard2019_a4_en.pdf
2. International Monetary Fund Staff, IMF Fiscal Transparency Code (FTC) - Pillar IV on natural resource revenue management (December 2019) https://www.imf.org/~/media/Files/Publications/PP/2019/pp122818fiscal-transparency-initiative-integration-of-natural-resource-management-issues.ashx
3. Responsible Mining Foundation, Responsible Mining Index Framework 2020 (July 2019) https://www.responsibleminingfoundation.org/app/uploads/2019/09/RMI_Framework2020_EN_web.pdf
4. Natural Resource Governance Institute, Beyond Revenues: Measuring and Valuing Environmental and Social Impacts in Extractive Sector Governance (September 2019) https://resourcegovernance.org/analysis-tools/publications/beyond-revenues-measuring-environmental-social-impacts