MEDEF

09.06.2020

CONSULTATION DOCUMENT

REVIEW OF THE NON-FINANCIAL REPORTING DIRECTIVE

This document constitutes MEDEF's response to the public consultation by the European commission on the review of the non-financial reporting directive, open from 20 February to 11 June 2020.

For more information on this document, please contact : Lucie TOGNI (ltogni@medef.fr) ; Karine MERLE (kmerle@medef.fr).

MEDEF

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?

	1	2	3	4	5	Don't know
The lack of comparability of non-financial information reported by companies pursuant to the NFRD is a significant problem.						
The limited reliability of non-financial information reported by companies pursuant to the NFRD is a significant problem.						
Companies reporting pursuant to the NFRD do not disclose all relevant non-financial information needed by different user groups.						

(1= mostly disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree)

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: (i) environment, (ii) social and employee issues, (iii) human rights, (iv) 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. NO

2.

3.

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. NO

2.

3.

Investment in intangible assets currently represents the majority of investment carried out by the private sector in advanced economies. There is a long-standing debate about the need for better reporting of intangible investments in company reports, including in relation to sustainability. Irrespective of the potential future changes to accounting standards, it is likely to remain the case that a significant proportion of intangible assets will fail to meet the definition of an asset or the criteria for recognition as an intangible asset in the financial statements. The Accounting Directive currently makes no explicit reference to intangible assets in the Articles concerning the management report, other than the requirement to report about activities in the field of research and development in Article 19(2)(b).

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

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

In order to ensure that the financial sector entities comply with the new disclosure requirements, laid down in the different pieces of legislation, in the most effective and efficient manner, there might be scope for better coherence between the different disclosure requirements.

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

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

Please provide any comments or explanations to justify your answers to questions 1 to 7.

MEDEF shares the Commission's diagnosis on the NFRD only partially reaching its goal of improving comparability and readability for users, notably, but not only, for investors. Particularly, the Directive allows differences in transpositions between European countries. This results in companies located in several European countries having to satisfy the various countries' requirements. Besides, too many member states options in the Directive do not allow a level playing field for European companies.

For MEDEF, improving comparability and readability of non-financial information can be achieved first via a better alignment of non-financial reporting obligations between EU countries, and between companies of the same sector, which should be the primary goal of the revision.

In addition, MEDEF agrees that issuers' non-financial reporting plays a central role in the successful implementation of new EU regulations on sustainable finance (taxonomy, disclosures and benchmark regulations). For the regulation to be effective, it is necessary to reach coherence between the various mechanisms, in a clear and consistent timeframe, and avoid duplicates.

- On specific questions of the consultation -

Question 1: from a French perspective, verification of the non-financial information provides reliability. We therefore oppose the second proposal by the Commission in question 1 that the information has "limited reliability", at the French level. Verification should be developed within EU countries that did not use this option so far.

Question 2: for MEDEF, the current non-financial matters (i.e. social, environment, human rights, anti-bribery) allow companies to report on all specific sustainability issues relevant to their activities, and so new matters do not need to be created. A helpful way to help companies develop reporting outside the scope of the obligation would be to submit a list of sustainability issues, in the non-binding guidelines for instance, on which to apply the principle of materiality.

Question 3: the existing categories of non-financial information related to a company's governance and management procedures, including related metrics where relevant, allow companies to explain their strategies and actions regarding significant sustainability issues and do not need to be completed by new ones. However, experience in implementing the NFRD has shown the need for a more detailed reporting standard, which would come as a tool to improve reporting within the current categories. (See answers to part 2 on Standardisation.)

Question 4: the current framework allows companies to include information on intangibles if they are considered significant to the company's activity, according to the principle of materiality.

Question 5: Non-financial information reported by companies in the scope of NFRD should respond to the needs of financial sector companies to meet their new disclosure requirements, with the help of a common European standard (part 2 of consultation) aimed at increasing comparability. However, MEDEF is highly concerned with the delegated act including specific ESG indicators on investees, showing clear overlap with the future NFRD standard, in a conflicting timeframe. In addition, within the taxonomy regulation, the new reporting obligation for companies under the scope of the NFRD raises questions. Although MEDEF welcomes the fact that the regulation favors information produced by the issuer itself, rather than a third party, it is concerned by the fact that it may be difficult for companies to produce this data. For instance: companies' granular activities do not always align with the activities considered by the taxonomy (NACE code), or large companies' activities can be deployed within and outside Europe, which increases the difficulty of verifying the technical criteria. In addition, the details regarding the production of this data will be developed in later implementation instruments. Therefore, MEDEF asks for a phased-in obligation because the implementation instruments under the Taxonomy Regulation are not currently available.

Question 6: there is a crucial need for coherence between NFRD revision and the new sustainable finance regulations. The Commission must focus on better aligning sustainability reporting obligations for investees and investors. For MEDEF, the NFRD revision can bring overlaps and demonstrates the need to streamline, especially with the delegated acts of the sustainable finance regulations. This is notably the case regarding ESG indicators, which are at the core of the proposed standard (part 2 of the consultation) yet also being developed in the delegated acts of the *disclosure* regulation.

Question 7: taking into account the six objectives set out in the taxonomy regulation is coherent with the need to better align the multiple initiatives. However, this alignment can only be achieved with respect to the principle of materiality. Companies must retain control over defining what are the significant environmental matters to report on according to their activities.

2. STANDARDISATION

Note: in this section, the word "standard" is used for simplicity. This should not be read as a suggestion that all relevant reporting requirements must be specified in a single normative document. Rather, "standard" is merely used as a shorthand that could encompass a consistent and comprehensive set of standards. Reporting standards define what information companies should report and how such information should be prepared and presented.

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

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

A number of non-financial reporting frameworks and standards already exist. Some, including the standards of the Global Reporting Initiative (GRI), the framework of the International Integrated Reporting Council (IIRC), and the standards of the Sustainability Accounting Standards Board (SASB), aim to cover most or all relevant non-financial issues.

<u>Question 10.:</u> 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 <u>comprehensively</u> meet the current disclosure requirements of the Non-Financial Reporting Directive, taking into account the double-materiality perspective (See section 4)?

	1	2	3	4	Don't know
Global Reporting Initiative					
Sustainability Accounting Standards Board					
International Integrated Reporting Framework					
Another framework or standard *					

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	4
1.				
2.				
3.				

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

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 **<u>taking into account international initiatives</u>**".

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).

<u>Question 11.:</u> 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:

	1	2	3	4	Don't know
Global Reporting Initiative					
Sustainability Accounting Standards Board					
International Integrated Reporting Framework					
Task Force on Climate-related Financial Disclosures (TCFD)					
UN Guiding Principles Reporting Framework (human rights)					
CDP					
Carbon Disclosure Standards Board (CDSB)					
Organisation Environmental Footprint (OEF)					
Eco-Management and Audit Scheme (EMAS)					
Another framework or standard *					

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	4	5
1. OECD Guidelines for Multinational Enterprises					
2.					
3.					

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

<u>Question 12.:</u> If your organisation *fully* applies any non-financial reporting standard or framework when reporting under the provisions of the NFRD, please indicate the recurring annual cost of applying that standard or framework (including costs of retrieving, analysing and reporting the information).

Name of standard or framework (max 3)	Estimated cost of application per year, excluding any one-off start-up costs.
N.A.	

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.

<u>Question 13.:</u> 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

<u>Question 14.:</u> 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

<u>Question 15.:</u> 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

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.

<u>Question 16.:</u> 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

<u>Question 17.:</u> 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/accountants. 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?

	1	2	3	4	Don't know
Investors					
Preparers					
Auditors/accountants					

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

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

	1	2	3	4	Don't know
Civil society representatives/NGOs					
Academics					
Other*					

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 categories (no more than three).

	1	2	3	4
1. Non financial rating agencies				
2.				
3.				

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

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?

	1	2	3	4	Don't know
European Securities Markets Authority (ESMA)					
European Banking Authority (EBA)					
European Insurance and Occupational Pensions Authority (EIOPA)					
European Central Bank (ECB)					
European Environment Agency (EEA)					
Platform on Sustainable Finance[3]					
Other*					

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 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).

	1	2	3	4
1. EFRAG				
2.				
3.				

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 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.

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

	1	2	3	4	Don't know
National accounting standards-setters					
Environmental authorities					
Other*					

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 type 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).

	1	2	3	4
1.				
2.				
3.				

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

Please provide any comments or explanations to justify your answers to questions 8 to 20.

There is a common understanding that companies face increasing demands for reporting from various stakeholders with various and sometimes conflicting interests, and that there is a lack of global consensus on a reporting framework of reference. The NFRD review comes in that context.

MEDEF considers that a standardised non-financial reporting framework is needed at the European level to enhance comparability of information in time and space, as well as supplant any private initiative that adds reporting burden and complexity for companies. Companies and their stakeholders must be fully associated to the process in order to insure the acceptability and effective use of the developed framework.

For MEDEF, the European reporting standard should respect the following principles.

Firstly, take into account companies' specificities: it is fundamental for companies to articulate with flexibility a common core of information, which is concise, with sector-specific data, as well as company specific information tailored to its activity and practices. It is necessary to keep considering the materiality of sustainability issues, which can vary broadly between sectors and between companies. In that regard, a comply or explain mechanism would be necessary for the standard to tailor companies' individual situation (for instance, multisectoral companies illustrate this need).

Secondly, take into account existing standards, their benefits and limits. MEDEF welcomes the questions in the consultation regarding existing frameworks. It is necessary to build the European standard on exiting initiatives, to make it more effective, as well as to reduce the cost of implementation by companies.

Thirdly, take into account companies' constraints in reporting, particularly the cost of producing data, the sensitivity of some information (e.g. trade secrets), as well as the subject of competitiveness of European companies under the scope of the standard against comparable companies in other geographical areas.

Fourthly, include a limited set of quantitative indicators as well as qualitative data is important. French companies, and their investors, value qualitative information on corporate vision and strategy regarding sustainability. This type of information, that can be more forward-looking, is essential to enrich the evaluation of a company's sustainability integration.

Fifthly and finally, the European standard is a step towards better comparability between companies in the region. In addition, improving convergence at the international level is a relevant goal towards which the Commission should also work.

- On specific questions of the consultation -

Question 8: if and only if it is largely accepted and used by companies and their stakeholders, therefore significantly reducing the number of additional demands for non-financial information currently observed.

Question 11: regarding the TCFD framework, the Commission's non-binding guidelines and their update on climate-related information should not be directly integrated into a text of higher level, as part of the Directive's revision. This would raise due process questions: the consultation of stakeholders and impact assessment undertaken on a non-binding tool is not as thorough as for a directive or regulation. Issues of level playing field, confidentiality of the data, and cost and feasibility are not taken into consideration as much for non-binding tools and would need to be properly assessed if considering creating new requirements in a binding text.

Questions 13-14-15: standard for SMEs. For MEDEF, SMEs should integrate sustainability issues progressively, in a way that is adapted to their size. We observe a development of reporting among SMEs, notably as the demand for information from client companies increases (cascading effect of larger companies' obligations). Sustainability reporting is a good practice to promote towards SMEs, on a voluntary basis and considering questions of maturity, cost of reporting as well as the need for a reasonable time of appropriation on these complex issues.

Questions 16-17-18-19-20: the actors at the centre of the process to develop the European standard should be companies, as well as investors, which are the primary users of the information published within the frame of the Directive. In addition, supervisors and non-financial rating agencies should also be included in the process in order to ensure acceptability and wide use of the standard. To remain efficient and fast in developing the standard, it is important to keep the number of actors working on the standard to a manageable amount. Therefore, MEDEF considers that only European level – rather than national level – actors should be involved in creating the standard. Naturally, all relevant stakeholders must be given the opportunity to input and opine on the standard proposal, using consultation mechanisms in due time.

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.

<u>Question 21:</u> 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*?

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

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*?**

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

Question 23.: **If you think there is a need to clarify the concept of 'material' non- financial information, how would you suggest to do so?**

The principle of materiality is crucial in sustainability as it highlights the differentiation in impacts and capacity for action on the various issues, considering the specificities of each sector and each company's particular business model.

However, its realisation was rather new in the context of sustainability and being built upon financial materiality can cause confusion for companies as well as their stakeholders.

The materiality principle in the context of sustainability information could be clarified within the revision of NFRD, taking into account the need for coherence with the concept's use in the disclosure regulation (2019/2088), and recent developments for instance regarding climate change in the non-binding guidelines.

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

Yes	No	Don't know

Please provide any comments or explanations to justify your answers to questions 21 to 24.

See answer to question 23.

In addition, in order to place sustainability at the core of companies' strategies, it is crucial that companies remain in charge of defining what the primary sustainability issues are, taking their activities and policies in consideration. Indeed, ESG priorities can vary broadly considering sectors, geographical areas, business models and companies' individual history. Taking into account each company's specificities helps greater CSR integration.

Regarding materiality, MEDEF would like to highlight the fact that the French transposition of the directive presents several differences compared to the European text. Indeed, it emphasised the identification of main risks instead of taking a broader materiality approach of risks *and opportunities*. This difference has resulted in various French companies following a different logic from the one promoted by the Directive.

As part of the revision, it is important to reach a better alignment between European and French levels on this matter.

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.

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

Question 32.: **If you publish non-financial information and that information is assured, please indicate the annual costs of such assurance.**

N.A.

If you provided an answer to the previous question, please describe the scope of the assurance services provided (issues covered, reasonable/limited, etc.).

N.A.

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

MEDEF is in favour of making verification by independent third parties mandatory for non-financial reporting within all European countries.

There is an overall consensus in France to consider that verification of non-financial data is a strong aspect of the French legislation. French companies consider that verification by an independent third party demonstrates the reliability and veracity of the data they produce. This answers a strong demand by their stakeholders, particularly investors and NGOs.

MEDEF would like to highlight the fact that the French transposition of the directive includes a mandatory verification of the non-financial reporting published by companies. They are required by law to appoint an independent third party, which can be an auditor or another organisation, certified by the national accreditation committee.

Making verification mandatory for companies in the scope of the NFRD under these terms would increase the level playing field. Moreover, it should be considered acceptable by all countries as there has been a general increase in maturity on non-financial reporting in Europe since the publication of the Directive.

- Regarding the content of the verification –

MEDEF considers that the verification by an independent third party must provide a limited assurance on the data published. Its role is not to assess the relevance of a policy or to form an opinion on companies' sustainability strategy. The content of the verification as set in the revision should be aligned with these principles.

It is important here to keep in mind the differences between financial and non-financial information. Indeed, non-financial information does not have the same nature or the same goals as financial information. Non-financial information can be more forward-looking, has a more qualitative dimension, and doesn't always have immediate monetary value. Considering these differences, applying the same level of assurance engagement is, at least, premature.

Moreover, any additional demand for verification, some of which are addressed in the present consultation, must be assessed taking into account the additional cost it would represent for companies.

Cost of auditing is a fundamental point, especially as the Commission is considering extending the scope of the Directive to companies below the 500-employees threshold, and in a Covid-19 crisis context.

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?

	1	2	3	4	5	Don't know
It would be useful to require the tagging of reports containing non-financial information to make them machine-readable.						
The tagging of non-financial information would only be possible if reporting is done against standards.						
All reports containing non-financial information should be available through a single access point.						

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree)

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

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

Question 35.: Please provide any other comments you may have regarding the digitalisation of sustainability information:

The creation of a single access point for non-financial information could contribute to making the data more accessible and readable for users, notably non-financial data providers and rating agencies.

As companies face numerous demands for non-financial information, digitalisation can be seen as a mean to reduce the burden on companies.

Therefore, MEDEF welcomes the fact that the Commission's opens this subject for debate at this early stage. It should be further debated and worked upon in the context of creating the reporting standard, taking into account the cost of implementation for companies. Furthermore, any decision should be conditional on the results observed through an in-depth analysis of the benefits and costs experienced by companies for the digitalisation of their financial statements.

Please provide any comments or explanations to justify your answers to questions 33 to 35.

Question 34: cost/benefits would be proportionate to a reasonable extent, if and only if the standard and the tagging become the only sources of information for users (including investors and rating agencies), thus reducing the burden of additional demands for companies.

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	2	3	4	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).				X		
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.				X		

[1= not at all, 5= to a very great extent]

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

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?**

	1	2	3	4	5	Don't know
Legislation should be amended to ensure proper supervision of information published in separate reports.						
Legislation should be amended to require companies to file the separate report with Officially Appointed Mechanisms (OAMs).						
Legislation should be amended to ensure the same publication date for management report and the separate report.						

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree)

Please provide any comments regarding the location of reported non-financial information.

For MEDEF, it should be made mandatory at EU level to disclose all necessary non-financial information in the management report, as it is already the case in France.

Having the required non-financial information in one place in the management report increases simple access to the data as well as readability of non-financial information. Besides, in order to develop integration of financial and non-financial information, referrals between parts of the report should be encouraged.

If companies decide to publish additional non-financial information in separate reports, they can do it in the timeframe they judge appropriate. This should remain the case.

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?**

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

Please provide any comments or explanations to justify your answers to questions 36 to 39.

MEDEF considers important to articulate financial and non-financial information, considering their differences. Non-financial information does not have the same nature or goals as financial information. Non-financial information can be more forward-looking, more qualitative, cannot always have immediate monetary value. Overall, non-financial information completes the vision on a company as depicted in the financial statement.

The publication medium is also important to ensure the quality of the information published. In France, publishing non-financial information in the management report demonstrates the strong engagement of the company's governance regarding the data quality. MEDEF is in favour of harmonising at the EU level the requirement to publish non-financial information in the management report.

- On specific questions of the consultation –

Question 39: having non-financial information in one place makes it easier for stakeholders to locate and use it. Referrals to other parts of the management report should be encouraged as financial and non-financial information become more and more integrated.

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.

<u>Question 40.:</u> 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?

	1	2	3	4	5	Don't know
Expand scope to include all EU companies with securities listed in regulated markets, regardless of their size.						
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).						
Expand scope to include *all* public interest entities, regardless of their size.						

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree)

<u>Question 41.:</u> If the scope of the NFRD were to be broadened to non-PIEs, to what extent would you agree with the following approaches?

	1	2	3	4	5	Don't know
Expand the scope to include *large non-listed* companies.						
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.						
Expand the scope to include large companies established in the EU but listed outside the EU.						
Expand the scope to include large companies not established in the EU that are listed in EU regulated markets.						

Expand scope to include *all* limited liability companies regardless of their size.						

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree)

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

If yes, please specify who in your opinion should carry out this task (National Competent Authorities, European Supervisory Authorities, other…) and how.

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 statement relating to possible changes of the personal scope of the NFRD for financial institutions?

	1	2	3	4	5	Don't know
The threshold criteria for determining which banks have to comply with the NFRD provisions should be different from those used by Non-Financial Corporates.						

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.						

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree)

Please provide any comments or explanations to justify your answers to questions 40 to 43.

We share the Commission's statement that developing the scope of companies covered by the NFRD would be a mean to increase sustainability reporting and users' access to ESG information by companies. However, expanding the scope needs to be carefully planned, based on a thorough assessment of the impacts, considering the feasibility and cost of reporting, especially in the current context where companies are facing tremendous financial difficulties. This is particularly the case for companies between 250 and 500 employees.

The scope could be extended first to companies with over 500 employees established in the EU but listed outside the EU as well as large companies not established in the EU but listed in EU regulated markets, in order to improve the level playing field and substantially increase the ESG information available to users globally. In addition, non-listed companies above the threshold of 500 employees could be included. In France, non-listed companies with more than 500 employees (with additional threshold on turnover and balance sheet total) are already in the scope of the non-financial reporting obligation with fewer categories of information to report on compared to listed companies (listed and non-listed report on social and environmental matters; listed companies report on human rights, anti-bribery and fiscal evasion matters as well). The differentiation in obligations between listed and non-listed companies can be, in the first instance, a mean to increase the number of companies submitted to the obligation while limiting the burden of reporting.

The Commission should also consider gradual obligations for new entrants, proportionate to the impact assessment mentioned above and the current economical situation.

Proportionality must also be taken into account when evaluating the potential consequences of new obligations for companies within the scope of the directive into their entities (perimeter of the reporting) and into their value chain.

Regarding specifically large companies between 250 and 500 employees, within the timeframe of the public consultation, we still lack proper evaluation of the implementation by companies, outside the largest listed ones, nor do we have the exhaustive visibility of which companies are already under the scope and what information they publish.

The recommendation to have limited obligations for new entrants would be especially crucial for smaller size large companies, particularly because of the current economic context (low acceptability of new regulation) and because the revision may substantially strengthen obligations for companies (see other parts of the consultation).

The principle of differences in time frame and differences in the levels of obligation is therefore a prerequisite to developing the scope of the NFRD to companies not already covered.

- On specific questions of the consultation –

Question 40: the NFRD should not be extended to companies "regardless of their size". Current application thresholds constitute a good balance which should be maintained in view of the cost of collecting and reporting sustainability data. In the part 2 on Standardisation, the Commission highlights SMEs' particularities and difficulties in implementing sustainability reporting: "requiring SMEs to apply the same standards as large companies may be a disproportionate burden for SMEs". The same logic must apply in this part of the questionnaire.

Question 41: On the one hand, all companies offering products or services in the EU should be subject to the same reporting obligations on sustainability policies and risks. Otherwise, EU companies are likely to be exposed to unfair competition and social or environmental dumping. MEDEF agrees with the expansion of the scope to include large companies established in the EU but listed outside the EU and to include large companies not established in the EU that are listed in EU regulated market. Thus, as for the standardisation, companies would be on the same level playing field. Nevertheless, we believe that this expansion can only be effective if the European Union has the means to implement it (costs of the implementation, ability to enforce the obligation for companies currently outside the EU scope). On the other hand, regarding reporting at the parent company level, MEDEF strongly disagrees with the proposition to remove the exemption for companies that are subsidiaries of a parent company to report non-financial information at group level in accordance with the NFRD. The exemption is appreciated by companies and there is no justification for changing it. This removal would induce important additional costs for companies.

8. SIMPLIFICATION AND REDUCTION OF ADMINISTRATIVE BURDENS FOR COMPANIES

Question 44.: If your company publishes non-financial information pursuant to the NFRD, please state how much time the employees of your company spend per year carrying out this task, including time of retrieving, analysing and reporting the information? Please provide your answer in terms of full-time-equivalents (FTEs, 1 FTE= 1 employee working 40h a week during 250 working days per year). Please provide your answer for reports published in 2019, covering financial year 2018.

N.A.

MEDEF

Please state the total cost per year of any external services, *excluding the cost of any assurance or audit services*, that you contracted to assist your company to comply with the requirements of the Non-Financial Reporting Directive. Please provide your answer for reports published in 2019, covering financial year 2018.

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.

<u>Question 45.:</u> To what extent do you agree with the following statements?

	1	2	3	4	5	Don't know
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.						
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.						
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.						

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree)

Please provide any comments or explanations to justify your answers to questions 44 to 45.

The usefulness and cost/benefit balance of non-financial reporting must be addressed, taking into account overlapping regulations (national and European), development of reporting frameworks in other regions, and international law differences on sustainability issues.

MEDEF demands that any addition of new requirement or any extension of the scope of companies in the perimeter of the NFRD be based on a detailed impact assessment, including for companies outside the scope of the NFRD that can be impacted via a cascade effect.

Finally, improving convergence on sustainability reporting at the international level could also contribute to facilitating companies' work and should be worked upon by the European Union.