

JBCE positions on the Non-Financial Reporting

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JBCE Profile

The Japan Business Council in Europe (JBCE), established in 1999, is the Brussels-based organization representing more than 60 European companies of Japanese parentage operating in Europe. The members are active in a wide range of industry sectors, including electric appliances, chemicals, transportation equipment, machinery, wholesale trade, precision instruments, pharmaceutical, land transportation, textiles & apparels, and glass & ceramics products. JBCE takes an active role in enhancing the understanding and their businesses of Japanese companies in Europe and in putting forward the views of its members on legislative issues currently under debate and on public policy issues which will shape the years to come (www.jbce.org). Responsible conduct of business is an overarching issue on which JBCE members place great importance in dialoguing with European stakeholders.

JBCE CSR Committee and its Contributions

The JBCE CSR Committee has been instrumental in channeling the member's voice to EU policy makers in three key areas: non-financial disclosure, diversity and business & human rights. The Committee holds regular meetings to exchange views with EU officials as well as to discuss and identify the benefits and shortcomings of EU initiatives. (Please see the Annex for a list of the JBCE CSR Committee's contributions so far.)

Why JBCE Contributes to European CSR Policy

JBCE can contribute to European CSR policy by making it 1) workable for the multi-national companies whose headquarters are outside of the EU, 2) compatible with global frameworks, and 3) effective for the EU to lead international CSR policy. JBCE appreciates the opportunity to engage in the process of drafting this non-financial reporting directive.

1. JBCE supporting points on the Commission's legislative proposal

JBCE (hereafter We) welcomes the European Commission's decision to strengthen the existing obligations instead of introducing new requirements. In particular, we support that the Commission avoids making the non-financial disclosure proposal overly prescriptive;

- 1) Provide companies some flexibility in judging material issues:** We appreciate the European Commission's decision not to mandate disclosure of specific non-financial Key Performance Indicators (KPI). We argue that a one-size-fits-all set of KPI at the EU level would not only stifle innovative business processes but also impede effective judgment of materiality.
- 2) Limit the information disclosure to the consolidated level:** We also welcome the fact that the Commission did not include the supply chain beyond the consolidated level in the scope for disclosure. We agree with the view that disclosure beyond the consolidated level in the value chain should not be mandatory. In our members' experience, to take the full control beyond the consolidated entity is almost impossible to realize.
- 3) Reporting on the consolidated level will create a solid foundation for the integration of corporate reporting:** We support the current proposal that allows exemptions to subsidiaries which are part of other consolidated undertakings. This approach is more effective than disclosure at legal entity level and provides the readers with a broader perspective on the company's activities and results.

2. Our suggestions to the Commission's legislative proposal

We would like to remind the European policy makers that global companies are motivated to integrate CSR into daily business to become more innovative and competitive in the global context. Public disclosure is one tool by which companies can strengthen the trust of their investors and stakeholders and leverage the improvements of companies' internal practices by making it part of the PDCA management cycle. Moreover, many private initiatives are in the making at the international level to forge cost effective and meaningful collaborative dialogues. In light of this context, we would like to propose the following;

- 1) **A non-financial statement should highlight a company's judgment over any disclosure items when deciding on materiality:** the proposed amendment of Article 46, paragraph 1 (78/660/EEC), and Article 36, paragraph 1 (83/349/EEC) requires companies to disclose non-financial information related to 'at least' environment, social and employee-related aspects, human rights, anti-corruption and bribery matters. We propose to replace at least with 'for example' to allow companies to maintain ownership in deciding what matters. Companies can provide more meaningful information if they are given flexibility to communicate what is relevant and material to their strategies and operations. Moreover, continuous expansion of disclosure items may have a detrimental effect on the very objective of corporate reporting that is to help readers to understand companies more holistically and dynamically.
- 2) **Flexibility should be granted for companies to choose the instruments of disclosure and the text should be amended as follows:**

Article 1(1)b

'4. Where a company prepares a comprehensive report corresponding to the same financial year relying on national, EU-based or international frameworks and which covers the information provided for in paragraph 1(b), it shall be exempt from the obligation to prepare the non-financial statement set out in paragraph 1(b), provided that such report is part of the annual report or referenced in the annual report where such document is publicly available on the company's website.'

Article 2(1)b

'4. Where a parent undertaking prepares a comprehensive report corresponding to the same financial year, referring to the whole group of consolidated undertakings, relying on national, EU-based or international frameworks and covering the information provided for in the third subparagraph of paragraph 1, the parent undertaking shall be exempt from the obligation to prepare the nonfinancial statement set out in the third subparagraph of paragraph 1, provided that such comprehensive report is part of the consolidated annual report or referenced in the consolidated annual report where such document is publicly available on the company's website.'

The proposed amendment of Article 46, paragraph 4 (78/660/EEC), and Article 36 paragraph 4 (83/349/EEC) requires companies to disclose non financial information in the annual report. From the perspective of reducing costs and avoiding the duplication of information, it makes sense to apply the same requirement as the corporate governance statement laid down in Art 46a of Directive 78/660/EEC and allow companies to disclose information in a separate existing report or to provide reference in their annual report where such document is publicly available on the company's website.

- 3) **The proposal should clarify that its exemption is applicable to subsidiary companies of companies headquartered in non EU countries as follows:**

Article 1(1) (c)

'5. A company which is a subsidiary company shall be exempt from the obligations set out in paragraph 1(b), if the company and its subsidiaries are consolidated in the financial statements and annual report of another company, whether or not the latter is governed by the law of a Member State, and that consolidated annual report is drawn up in accordance with Article 36(1) of Directive 83/349/EEC.'

Article 2 (1) (b) para.2

5. A parent undertaking which is also a subsidiary undertaking shall be exempt from the obligations set out in the third subparagraph of paragraph 1, if the exempted undertaking and its subsidiaries are consolidated in the financial statements and annual report of another undertaking, whether or not the latter is governed by the law of a Member State, and that consolidated annual report is drawn up in accordance with the third subparagraph of paragraph 1.

We would welcome a clarification that the exemptions applicable to subsidiary companies will be applied to subsidiary companies of non-EU parent companies. As Directive 83/349/EEC Article 11 explicitly refers to the possibility of exemptions to subsidiary companies of non-EU parent companies, JBCE proposes to add “whether or not the latter is governed by the law of a Member State,” in the Article 1(c) and Article 2(1)(b) of the proposal.

- 4) **Reporting requirements should be transposed consistently across the EU:** Article 3 of the amended proposal should be strengthened by a provision that would minimize fragmented transpositions by Member States. We acknowledge that the very aim of the current legislative proposal is to bring more coordinated measures among Member States in this field. Yet, as already acknowledged by the Commission, several EU Member States have adopted legislation regulating disclosure of non-financial information. As a result, global companies operating across EU countries currently face a complex and non-cost effective task of complying with these differing requirements.
- 5) **Exemption conditions should be coherent with the Accounting directives in force:** paragraph 3 of Article 46a should be amended as follows.

Member States may exempt companies which have only issued securities other than shares admitted to trading on a regulated market, within the meaning of Article 4(1), point (14) of Directive 2004/39/EC, from the application of the provisions of paragraph 1, points (a), (b), (e), (f) and (g), unless such companies have issued shares which are traded in a multilateral trading facility, within the meaning of Article 4(1), point(15) of Directive 2004/39/EC.

Article 46a in force already allows Member States to exempt companies which have only issues securities other than shares from describing the composition and operation of the administrative, management and supervisory bodies and their committees in its corporate governance statement by the point (f). As the proposed amendment of Article 46a is one element of this point (f), JBCE proposes to include (g) in the exemption allowed in paragraph 3.

ANNEX: JBCE's policy contributions related to CSR

- ✓ Active participation in the European Workshops on Disclosure of Environmental, Social and Governance Information, organized by DG Enterprise (October 2009 to February 2010);
- ✓ Response to the consultation on EU2020 ([January 15, 2010](#));
- ✓ JBCE Statement on the Issue of ESG Disclosure ([February, 2010](#))
- ✓ JBCE's statement for the European Multistakeholder Forum on CSR, Plenary Meeting 2010 ([Nov.29-30, 2010](#))
- ✓ Response to the consultation on Disclosure of Non-Financial Information by Companies ([January 18, 2011](#))
- ✓ Letter to the European Commission President Barroso; On the Forthcoming Legislative Proposal on Non-financial Information Disclosure ([November 28, 2011](#))
- ✓ Response to the consultation on the 4th generation of the Sustainability Reporting Guidelines of Global Reporting Initiative (GRI) ([September 25, 2012](#))
- ✓ JBCE's Comment regarding the ICT Sector Guidance on Business and Human Rights ([February 19, 2013](#))
- ✓ JBCE Round Table on Business and Human Rights: "How companies are communicating the relevance of human rights at an operational level?" ([January 25, 2013](#)).
- ✓ Response to the consultation on a possible EU initiative on responsible sourcing of minerals originating from conflict-affected and high-risk areas ([June 26, 2013](#))