

MEMO# 32305

March 19, 2020

Detailed Summary of EU NFRD Consultation; Second Member Call on 7 Apr

[32305]

March 19, 2020 TO: ICI Global Members

ESG Task Force

ICI Global Regulated Funds Committee SUBJECTS: Compliance

Disclosure

International/Global

Investment Advisers

MiFID, EMIR, AIFMD, UCITS V RE: Detailed Summary of EU NFRD Consultation; Second Member Call on 7 Apr

We will have a second conference call on Tuesday, 7 April to discuss our response to the European Commission's consultation on ESG-related disclosure for corporate issuers as part of its review of the Non-Financial Reporting Directive (NFRD).[\[1\]](#) We intend this call to focus on a draft top-line response to various items in the consultation document, building on the items we discussed on our first call. We will circulate a calendar invitation and will provide call materials at least one week in advance of the call so that you have time to review.

For reference, below is a more detailed description of the NFRD's current scope and the areas that the Commission is looking to address in its consultation.

Current Disclosure Requirements

The NFRD requires certain large companies to include a non-financial statement as part of their annual public reporting obligations.[\[2\]](#)

Companies reporting pursuant to the NFRD must disclose 1) board diversity as part of the Corporate Governance Statement, and 2) a non-financial statement on the impacts of a company's business activities on issues that fall into the following four categories:

- Environmental matters
- Social and employee matter
- Respect for human rights
- Anti-corruption and bribery issues

For each of those categories, the NFRD requires companies to disclose information about

their business model, policies (generally on a comply-or-explain basis), outcomes, risks and risk management, and key performance indicators (KPIs) relevant to the business. It does not introduce or require the use of a non-financial reporting standard or framework, nor does it impose detailed disclosure requirements such as lists of indicators per sector. Companies are given the freedom to disclose this information in the way they find useful or in a separate report.

In June 2019, the European Commission published nonbinding guidelines on climate-related reporting under the NFRD.^[3] The guidelines aim to align with the UN-sponsored Task Force on Climate-related Financial Disclosures (TCFD) recommendations, but differ from TCFD in taking a “double materiality” perspective. The Commission intends the concept of “double materiality” to capture both the impact of the climate on the company (financial materiality) and the impact of the company on the climate and other sustainability indicators (environmental and social materiality).

The EU Taxonomy Regulation, finalized in late 2019, further will require companies subject to the NFRD to disclose information on how and to what extent the company’s activities are associated with environmentally sustainable economic activities as defined by the Taxonomy.^[4]

Scope of Companies Subject to NFRD

Companies under the scope of the NFRD had to report according its provisions for the first time in 2018 (for financial year 2017). The NFRD applies to large Public Interest Entities (PIE) with more than 500 employees. In practice, it includes large listed companies, and large banks and insurance companies (whether listed or not)—all providing they have more than 500 employees.

The definition of a PIE differs in different EU Member States, and the Directive has been implemented slightly differently in different Member States. Most Member States, except France, focus the reporting requirements on listed companies, while France includes some unlisted companies that are above certain financial and employee thresholds. Some other countries, including Denmark and Sweden, require (or will require, over the coming years) companies with 250 employees or more to prepare a report as well.

This means that most companies in the European Union are not obliged to comply with the NFRD reporting requirements. Small and medium sized enterprises (SMEs) represent 99% of all businesses in the European Union and generally are not subject to the NFRD.^[5]

Consultation on Commission’s Review of NFRD

In its 11 December 2019 Communication on the European Green Deal, the Commission committed to review the NFRD in 2020 as part of the strategy to strengthen the foundations for sustainable investment.^[6]

In line with that commitment, on 20 February 2020 the Commission launched a public consultation on the review of the NFRD. The consultation deadline is 14 May.

The consultation focuses on the following areas: disclosure content, adoption of existing corporate disclosure standards, scope of companies subject to NFRD, sustainability impact and definition of materiality, assurance requirements, and format and location of disclosure.

The Commission intends this review to address its concerns about inadequate publicly

available information about how non-financial issues, and sustainability issues in particular, impact companies, and about how companies themselves impact society and the environment. The Commission is particularly concerned about this area in light of new disclosure requirements for financial market participants and financial products under the Disclosure Regulation and Taxonomy Regulation.^[7] Asset managers and funds will be subject to a host of new ESG-related disclosure requirements, and they will need to obtain this information from the issuers in which funds are invested. It therefore is essential that the NFRD review address company disclosure of this needed information.

Attached is a more detailed summary of each of the consultation questions, as well as the full version of the consultation for your reference.

Linda M. French
Assistant Chief Counsel, ICI Global

[Attachment No. 1](#)

[Attachment No. 2](#)

endnotes

[1] The consultation questionnaire is available at <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12129-Revision-of-Non-Financial-Reporting-Directive/public-consultation>.

[2] More information on the NFRD is available at https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en.

[3] More information on the Commission's *Guidelines on non-financial reporting: Supplement on reporting climate-related information C/2019/4490* is available at https://ec.europa.eu/info/publications/non-financial-reporting-guidelines_en.

[4] See Article 4delta of the Taxonomy Regulation. The EU legislators reached political agreement on the text of the Taxonomy Regulation in December 2019, but the final text has not yet been published in the Official Journal. The provisional version of the text is available at <https://data.consilium.europa.eu/doc/document/ST-14970-2019-ADD-1/en/pdf>. Further substantive changes to the text are not anticipated.

[5] See https://ec.europa.eu/growth/smes_en.

[6] See ICI memo no. 32114 (19 Dec 2019), available at https://www.ici.org/my_ici/memorandum/memo32114.

[7] A detailed summary of the various requirements in the Disclosure and Taxonomy Regulations is available in ICI memo no. 32229 (21 Feb 2020), available at <https://www.ici.org/esg/international/Policy-Developments/ci.memo32229.idc>.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.