STAKEHOLDER EXPECTATIONS ON CSR MANAGEMENT AND CURRENT REGULATORY DEVELOPMENTS IN EUROPE AND GERMANY

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Abstract

The new European Directive 2014/95/EU extends the corporate disclosure of public interest entities (PIE) in the EU by a non-financial statement. The new member state option allows either the integration of these sustainability-related aspects into the traditional management report or the preparation of a separate report in line with established CSR guidelines – for example a sustainability report in accordance with the Global Reporting Initiative (GRI) guidelines or an integrated report in accordance with the International Integrated Reporting Council (IIRC) framework. However it is unclear which sustainability-related aspects as a key instrument of CSR management should be prospectively disclosed. Although the EU is seeking for concretization hereof, the member states are facing the challenge of implementing this Directive without any specific instructions or definition of sectoral key performance indicators to be disclosed. Based on a German survey of various stakeholder groups the present article explores, which sustainability-related aspects are useful for their decisions and could be therefore disclosed within the management report in accordance with the GRI guidelines.

Keywords: Corporate Disclosure; Stakeholder Relations; Corporate Social Responsibility Management; CSR reporting; Corporate Governance

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1 Introduction

On November 15th 2014 an update of the European accounting Directive was published in the Official Journal of the European Union (EU Directive 2014), which focuses the disclosure of non-financial information by public interest entities (PIE). By setting a certain minimum of legal requirements the current regulation pursues to enhance the transparency as well as the comparability of information on social and environmental aspects of business operations in the European member states (Spießhofer, 2014; Voland, 2014; Voland, 2015). Large PIEs with an average number of more than 500 employees during the financial year shall publish a non-financial statement. The member states are to implement this Directive by December 6th 2016 for the financial years starting on or after January 1st 2017. In order to increase the intertemporal comparability of the sectoral non-financial key performance indicators the European legislator plans to prepare non-binding guidelines by that date as a reference for the extended disclosure.

With this latest accounting reform the European legislative branch has taken an additional step towards establishing non-financial aspects of reporting within the disclosure duties of approximately 6.000 PIEs (EU Commission, 2014a). Due to the existing member state options the question arises as to how the Directive can achieve a comparability of disclosure of non-financial key performance indicators taking into account the recent efforts to improve the disclosure behavior resulting from integrated reporting.

Following a brief presentation of the background and the history of this regulatory measure (chapter 2). the main elements of the new Directive are first presented and then critically evaluated. Building on that we present the results of a survey among various stakeholder groups as to which non-financial key performance indicators of the GRI/3.1 guideline (Global Reporting Initiative, 2011) should be considered within the scope of sustainability reporting (chapter 3). Furthermore we briefly outline an outlook on possible further development of the corporate management reporting within the EU as well as within

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its member states (chapter 4). The article concludes with a summary (chapter 5).

2 Sustainability reporting according to the new Directive 2014/95/EU

2.1 Background

Following an appropriate period of public consultation (EU Commission, 2011a) the European legislator has initially emphasized the enhancement of transparency of the ecological and social information of companies in all member states by developing an appropriate legislative proposal (EU Commission, 2011b) and reaffirmed its importance in a communication published in October 2011 (EU Commission, 2011c). Thus the corporate responsibility concerning disclosure behavior should be adequately specified and the non-financial information should be made accessible to a broader stakeholder group. Furthermore this should help restoring the investors' and consumers' confidence in the actual profile of the business activities of PIEs, which was decreasing after the financial crisis of 2008/09.

The necessity of guidelines on disclosure of nonfinancial information by PIEs was emphasized by the European Parliament in a report passed at the beginning of 2013 (EU Parliament, 2013). The relevance of the new concept of integrated reporting according to the International Integrated Reporting Council (IIRC) in enhancing the transparent disclosure behavior concerning the information on quantitative and qualitative aspects of entrepreneurship has also been highlighted. In this respect the European Commission submitted an amendment proposal for the EU accounting Directive in April 2013 according to which companies with more than 500 employees and a turnover of more than EUR 40 million or a total balance sheet of more than EUR 20 million have to include a non-financial statement on sustainabilityrelated aspects of their business activities in their management report (EU Commission, 2013; Fink and Fistric, 2013; Glaser and Hachmeister, 2014; Lanfermann, 2013; Schrader, 2013).

Following the agreement on the relevant user group reached by the European Parliament and the Council of the European Union in February 2014, the European Parliament passed the amendment of the Directive in April 2014 (EU Commission, 2014b). On September 29th 2014 the European Council of Ministers accepted the Directive (EU Council, 2014), which was subsequently published in the Official Journal of the European Union in mid-November 2014. Directive 2014/95/EU becomes effective on the twentieth day following the day of its publication (EU Directive, 2014).

2.2 Contents

The Directive 2013/34/EU passed two years ago was expanded by the recently passed EU accounting Directive 2014/95/EU to include a new article 19a "Non-financial statement" and an article 29a "Consolidated non-financial statement". These regulations shall apply to sole PIEs (separate financial statement) or PIEs being a parent company of a large group (consolidated financial statement) with an average of more than 500 employees during the financial year. The (group) management report of these companies shall prospectively include a nonfinancial statement containing information necessary for an understanding of the group's development, its performance, position and impact of its business activity.

The European legislator argues in this context that the disclosure of non-financial information is vital for managing the transition towards a sustainable global economy (EU Directive, 2014). The mandatorily disclosed non-financial statement should depict the corporate activities in a more differentiated manner and thus foster investors' and consumers' confidence in the reporting entity. The non-financial statement should include information relating to at least following subject areas:

- environmental matters, •
- social matters,
- employee-related matters, •
- respect for human rights as well as
- prevention of corruption and bribery.

Further contents of the non-financial statements are:

- a brief description of the business model,
- a description of the policies being implemented in relation to foregoing subject areas, including due diligence processes,
- the outcome of those policies,
- the fundamental risks linked to the company's business activity including, where relevant and proportionate, its business relationships, products or services which are likely impact the foregoing areas negatively as well as the management of those risks;
- non-financial key performance indicators relevant to the particular business activity.

The reporting entity may include, where appropriate, references to and additional explanations of the amounts reported in the annual financial statements. The non-financial statement can be disclosed in accordance with national, EU-based or international frameworks, whereas the respective framework should be specified by the reporting entity. Such guidelines on sustainability reporting as the German Sustainability Code (GSC) (German Council for Sustainable Development, 2015; see also Hamborg and Jung, 2014; Kleinfeld and Martens, 2014; Zwick, 2014) and the GRI (Global Reporting Initiative, 2013) or the IIRC-framework for Integrated Reporting (International Integrated Reporting Council, 2013) come particularly into consideration.

If the reporting entity did not pursue any specific strategy considering one or more of the foregoing subject areas, the non-financial statement should

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allege reasons for doing so. The respective member state option ensures the protection against competition. Thus the information concerning future performance or issues under negotiation might be omitted, if the members of the administrative, management and supervisory bodies estimate the disclosure of such information to be seriously prejudicial to the commercial position of the company (EU Directive, 2014).

On one hand an exemption from the obligation to prepare the non-financial statement to be included in the management report could be granted within the scope of a so-called group clause (Article 19 a (3) of the EU amending Directive). According to this clause the disclosure obligation is not applicable, if the relevant reporting aspects are included in the consolidated management report or in a separate report of another reporting entity. On the other hand due to the member state option referred to in the Article 19a (4) the disclosure of the non-financial statement within the management report might be waived, if the reporting entity prepares a separate report - such as the management commentary according to the IASB guidelines, a sustainability report in accordance with the GSC or GRI guidelines or an Integrated Report prepared following the framework of the IIRC – which is published together with the management report or is made publicly available within a reasonable period of time (not exceeding six months after the balance sheet date) on the reporting entity's website and is referred to in the management report.

In accordance with the Article 19a (5) of the Directive member states shall ensure that a statutory auditor or audit firm review formally, whether the non-financial statement or the separate report has been provided. Insofar, a substantive audit of the contents of the non-financial statement by an independent third party is not immediately required. However, by the means of the member state option the member states may stipulate that the aspects in the non-financial statement should be verified by an independent assurance services provider (article 19a (6)).

3 Empirical survey of stakeholder expectations regarding sustainabilityrelated aspects in German management reporting

The European legislator aims to intensify the disclosure of sustainability-related information within the framework of the regular disclosure behavior of PIEs by imposing a severer regulation on the reporting obligations. However, the currently disclosed key sustainability performance indicators have not been examined empirically on the transnational level yet. In the light of establishing a comparable reporting process throughout the EU the fundamental nonfinancial key performance indicators should be identified at first. Although the European legislator indeed recognized this problem, the has representatives of the member states were provided with neither a guideline nor a branch-specific criteria catalog yet. Therefore such sustainability-related aspects of non-financial statement should be determined, which are regarded as relevant by several stakeholder groups and should thus become an element of the (group) management report. Especially the internationally established GRI guidelines present a useful guidance in this context.

This issue was addressed by an empirical study in 2011/12, surveying the companies listed on the German share index (DAX-30) and selected banks on the part of the accounting and reporting practice, hereafter jointly referred to as "report preparers". On the part of the "report readers" the relevant representatives of audit companies, investment firms and magazines publishers were interviewed (Stawinoga, 2013). The total of 112 companies was addressed by the survey, whereas 39 companies have responded by filling out and returning the questionnaire (Stawinoga, 2013).

Companies	Sample	Respondents		
		absolutely	as a percentage	
Report preparers				
1. DAX-30	28	11	39,29 %	
2. Financial Institutions	23	12	52,17 %	
Sub-Total	51	23	45,10 %	
Report Readers				
1. Audit firms	24	7	29,17 %	
2. Investment firms	20	4	20,00 %	
3. Publishing house	17	5	29,41 %	
Sub-Total	61	16	26,23 %	
Total	112	39	34,82 %	

 Table 1. Survey sample

Source: Stawinoga, 2013

The survey has pursued to identify the anticipated impacts of an integration of sustainability-related aspects into the management report. In this

regard the survey has shown that the expected consequences of such a integration vary among the both survey groups

Figure 1. Expected impacts of an integration of sustainability-related aspects into the management report



Source Stawinoga 2013

Three of seven predefined possible impacts with an approval rate greater than 75 percent display the greatest expected value related to the response by both survey groups (see Figure 1: Impacts a. to c.). These impacts could be hence considered to be of a fundamental character. Therefore the extended management reporting could be assumed to contribute positively to a differentiated view of the reporting entity, to foster its reputation and credibility as well as to enhance the decision usefulness of the management report. In contrast, achieving cost advantages by preparing a single report and intensifying the dialog with different stakeholder groups seems to play a subordinate role in the perspective of the surveyed groups (Stawinoga, 2013).

Furthermore the survey has explored which performance groups of the GRI/3.1 guidelines could be disclosed within the framework of management reporting. In order to identify these performance groups a threshold value of 75 percent was specified first. At the assessment of the survey's findings this value should ensure with a sufficient certainty in assuming that a component of the GRI/3.1 framework could be integrated into the management report. According to this threshold value the integration of a GRI/3.1 performance group into the management report should be supported by at least 75 percent of the respondents within each survey group, as only above that threshold value the decision usefulness and hence the necessity of integration of a GRI/3.1 performance group as a sustainability-related information into the management report could be assumed with a sufficient certainty (Stawinoga, 2013).

Based on 37 performance groups of the GRI/3.1 framework, the integration of 19 performance groups is being supported by at least 75 percent of respondents within each survey group. This survey result suggests that these GRI/3.1 performance groups should provide the basis of an integrated reporting. Moreover this result shows that by integrating these performance groups into the management report the disclosure of ecological and social reporting aspects could be enhanced (Stawinoga, 2013). Therefore the consideration of those GRI/3.1 performance groups within the methodological guideline on disclosure of non-financial aspects within the (group) management report announced by the European legislator seems to be especially recommendable.

The results suggest as well that the integration of several GRI/3.1 performance groups is being supported by at least 75 percent of respondents within either survey group. As the threshold value is being exceeded within only one survey group in those cases, the corresponding performance groups can not necessarily be assumed to be the central element of an integrated reporting. Those sustainability-related subject areas should be rather considered as complementary indicators of an integrated reporting, depending on such aspects of the reporting entity as its size, legal form and capital market orientation (Stawinoga, 2013).

Complementary components of integrated reporting (report preparers ≥ 75.00 %)	Core components of integrated reporting (report preparers & report readers ≥ 75.00 %)	Complementary components of integrated reporting (report readers ≥ 75.00 %)	
 Compliance Occupational health and safety Diversity and equal opportunity Freedom of association and collective bargaining Remediation Local communities Public policy Compliance Compliance with legislative provisions 	 Economic performance Market presence Indirect economic impacts Energy Water Emissions, sewage and waste Products and services Total environmental protection expenditures Employment Training and education Investment and procurement practices Non-Discrimination Child labor Forced and compulsory labor Assessment Corruption Anti-competitive behavior Product and service labeling Customer privacy 	 Materials Customer health and safety 	
9 performance groups of the GRI/3.1 guideline	19 Performance groups of the GRI/3.1 guideline	2 Performance groups of the GRI/3.1 guideline	

Figure 2. Core and	complementary	components of	integrated	reporting

Furthermore the integration of seven performance groups of the GRI/3.1 guidelines is being supported by less than 75 percent of respondents within both survey groups.¹⁰ Since the response values within both survey groups fell below the threshold value, the survey suggests that the respondents attach less significance to those performance groups, so that they should not necessarily be integrated into the management report (Stawinoga, 2013).

Based on the survey results in the context of integrated reporting the performance groups of the GRI/3.1 guidelines can be divided into three groups. On one hand, the integration of several performance groups is being supported with sufficient certainty by either or by both survey groups. These performance groups should be integrated as core or as additional indicators into the management report. On the other hand, the integration of a total of seven performance groups could not be supported with sufficient certainty by either survey groups. These sustainability-related aspects should not necessarily be disclosed within the management report. These empirical findings imply that merely the selected aspects of the GRI/3.1 guidelines should be integrated into the management report, if it were extended to include non-financial performance indicators (Stawinoga, 2013).

4 Critical evaluation of the development of (an integrated) sustainability reporting

By passing the Directive 2014/95/EU the European legislator has set a milestone for integration of sustainability reporting into the regular accounting instruments of PIEs throughout the Union. Generally, this regulatory measure helps to fulfill the increased information requirements of the stakeholder groups and to enhance the inter-company comparability of external reporting. However reliable empirical studies assessing the quality of sustainability reporting are still pending in all EU member states.

In the new Directive the European legislator draws on the political compromise solution of member state options, which may lead to a heterogeneous reporting on the sustainability-related aspects. The

¹⁰ These are particularly the performance groups of biodiversity, transport, labor/management relations, equal remuneration for women and men, security practices, indigenous rights and marketing communications.

disclosure option for a non-financial statement allowing the disclosure in a management report, a management commentary, a sustainability report or an integrated report should be especially pointed out, as it counteracts the objective of a comparable reporting throughout the EU.

Furthermore it should be emphasized that the substantive examination of the non-financial statement in the context of external audit is not mandatory throughout the EU yet (Freiberg, 2015; Velte, 2014). The formally reviewed non-financial statements might not be able to fully strengthen the credibility of the reporting entity among the stakeholder groups. Establishing a mandatory substantive audit seems to be a reasonable measure to ensure the reliability of the non-financial statement. It remains to be seen which EU member states would implement such mandatory audit by an independent third party.

Regarding the mandatory substantial audit of the non-financial performance indicators by а representative of the accounting profession the guidelines of § 289 (3) of German commercial law ("HGB") should be mentioned, which have already established such audit for the management report of large corporations (Fink, Kajüter and Winkeljohann, 2013; Stute, 2013). In this context the risk of splitting the (group) management report into two parts by implementation of the non-financial statement characterized by diverging audit intensity should be noted (Dolderer, Rieth and Schmidt, 2014).

Although the European legislator continues intending to indicate guidelines and sector-specific performance indicators, the member states have not yet been provided with any further indications as to which non-financial aspects or performance indicators should be reported throughout the EU. Thus in the next few years the member states should transform the European guidelines into national law without any additional guidance or recommendations. It would later become apparent whether thereby a comparable disclosure on non-financial and diversity-related issues could be established throughout the EU member states.

Finally the development of sustainability reporting, which was achieved by updating the GRI guidelines in May 2013 (Kajüter, 2014; Maniora, 2013; Müller and Stawinoga, 2013), as well as that of integrated reporting, which occurred after the IIRC has adopted the framework in December 2013 (Cheng et al., 2014; Fasan, 2013) should be mentioned. These developments and the expertise accumulated by the accounting practitioners have not been adequately taken into account in the Directive. The accounting and reporting practice currently show that several companies have recognized the necessity of an extended disclosure of non-financial performance indicators prior to the adoption of the EU Directive. In addition to disclosing a sustainability report to all internal and external stakeholders (Alonso-Almeida, Llach and Marimon, 2014), these companies seek consequently to provide an integrative disclosure of the essential financial and non-financial performance indicators within the framework of an integrated report, whereas some of them already disclose the first integrated reports to long-term capital investors (International Integrated Reporting Council, 2015).

5 Conclusion

Since the financial crisis in 2008/09 sustainability reports have become increasingly popular, primarily among the PIEs. Although a separate sustainability report may be disclosed voluntarily, from the European point of view large corporations should at least have disclosed such non-financial performance indicators in the (group) management report which are significant to their business activity. These aspects were subject to substantive audit by the statutory auditor.

As the European legislator has referred to the various quality gaps in the reporting practice, Directive 2014/95 significantly enhances the regular disclosure of the PIEs by a non-financial statement. In the context of the member states options integration of the non-financial sustainability related information into either the (group) management report or a separate report is conceivable. As a catch-all provision the new EU Directive provides only for a formal review of the sustainability-related aspects of the statement, whereas a member states option allows for stipulation of the substantive audit by the member states. While the opening clauses regarding the accounting and auditing provide the respective member states and companies with a high flexibility with respect to the disclosure, a lack of comparability is standing on the other side of this coin.

Furthermore the sustainability-related performance indicators which should be disclosed within the non-financial statement have not been identified yet. In the context of an empirical study several performance groups of the GRI/3.1 guidelines have been identified as being relevant to the management report, so that those could consequently be disclosed in this accounting instrument. The survey has explored that particularly such aspects of the GRI/3.1 guidelines which specify the ecological and social performance dimensions should be disclosed within the management report. These results may serve as guidance in determining the configuration of the non-financial statement as a part of the (corporate) management report in the member states.

By passing the Directive 2014/95 the European legislator has taken an important step towards realising a transparent reporting on sustainabilityrelated aspects within the disclosure behavior of certain capital-market oriented companies. However due to the great variety of member state options, it would later become apparent whether this regulation is sufficient to establish a comparable disclosure on the non-financial aspects of business activities throughout the EU member states.

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