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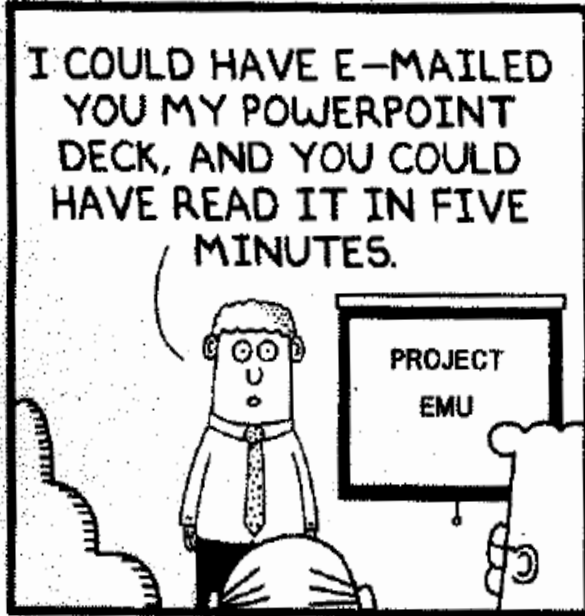
# Proposal of the European Commission to Amend the EU Accounting Directives:

## Disclosure of Non-Financial and Diversity Information by Certain Large Companies and Groups

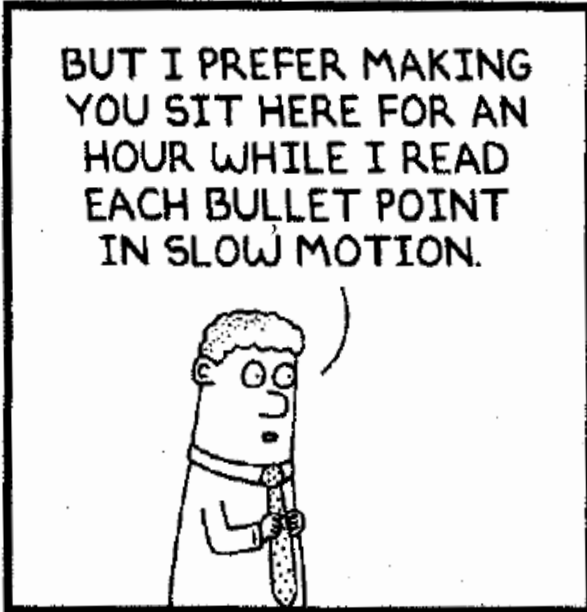
Howard M. Liebman\*  
Jones Day  
Brussels, Belgium

ERA Conference on  
European Company  
Law and Corporate  
Governance  
26 September 2013

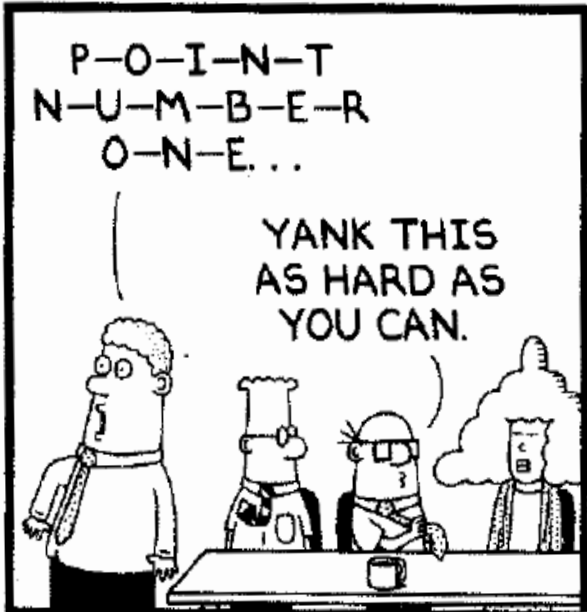
\* With the invaluable assistance of Elena Bojilova, Jones Day, Brussels, Belgium



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# What's going on?

- On 16 April 2013, the European Commission adopted a proposal for a new directive which would amend the Accounting Directives (Fourth and Seventh Company Law (Accounting) Directives on Annual and Consolidated Accounts, *78/660/EEC* and *83/349/EEC* respectively), concerning the disclosure of non-financial and diversity information by certain large companies. See COM(2013) 207 final (the “Proposal”), a copy of which is in the supplementary material.

# What's going on?

- On 26 June 2013, the European Parliament and the Council of the European Union adopted Directive 2013/34/EU, repealing the Fourth and Seventh Accounting Directives on Annual and Consolidated Accounts, and consolidating them in one instrument. OJ L 182, 29.6.2013, p. 19.



# Background

- This measure had already been foreseen by the Commission as part of:
  - Its Single Market Act (notably in its intention to promote greater transparency in the provision of social and environmental information to the broader public) of April 2011. See IP/11/469.
  - Its Communication on “A renewed strategy 2011–2014 for Corporate Social Responsibility”, issued in October 2011. See IP/11/1238.
  - In the Action Plan for Company Law and Corporate Governance adopted in December 2012. See IP/12/1340.

# Background continued

- The Commission engaged in extensive consultations with Member States, companies, investors, and other stakeholders, commencing with a broad public consultation in November 2010. An Impact Assessment was concluded in 2012, after different policy options were considered, with the intention of adopting a balanced proposal allowing for significant progress on useful, transparent reporting by companies, while avoiding undue administrative burdens.

# Background continued

- To date EU legislation, in particular Article 46(1)(b) the Fourth Accounting Directive (and now Article 19(1) of Directive 2013/34), addresses the disclosure of non-financial information in a way that companies may effectively choose whether or not (and how) to make public certain information on environmental, social and other aspects of their activities:

“To the extent necessary for an understanding of the undertaking’s development, performance or position, the analysis [in the Management Report] shall include... where appropriate, non-financial key performance indicators relevant to the particular business”.



# Background continued

- As this text is rather vague and open to interpretation (and applied in different ways in different Member States), it has proven ineffective. According to the European Commission's own estimates, not much more than 5% of the largest EU companies currently disclose such information regularly.



# Background continued

- Over time, some Member States have introduced disclosure requirements that go beyond these Company Law Directives. Per the European Commission, the UK introduced legislation in 2006 (which is now being updated), Sweden adopted legislation in 2007, Spain in 2011, Denmark amended its legislation in that same year, and the latest changes in France date from May 2012. But obviously this has all been ad hoc.

# Background continued

- The Commission has recognized that the costs associated with the required disclosures for large companies must be commensurate with the value and usefulness of the information, and with the size and complexity of the companies involved.

# Background continued

- On 6 February 2013, the European Parliament adopted two resolutions (“Corporate Social Responsibility: accountable, transparent and responsible business behavior and sustainable growth” and “Corporate Social Responsibility: promoting society’s interests and a route to sustainable and inclusive recovery”), acknowledging the importance of corporate-level transparency on environmental and social matters.

# Key Objectives of the Proposal

- Enhance transparency and increase the relevance, consistency and comparability of non-financial information.
- Increase diversity on corporate boards.
- Increase the accountability and performance of companies.



# Detailed Explanation of Proposal

- Article 1(a) of the Proposal will require certain large companies to include a statement in their Annual Report which must include material information relating to, “at least”, environmental, social and employee-related matters, respect of human rights, anti-corruption and bribery issues. Within these areas, the statement must include (i) a description of the company’s policies; (ii) results; and (iii) a discussion of risk-related aspects.

# Who will be affected?

- As specified in Article 1(a) of the Proposal, the obligation will only apply to those companies with over 500 employees which also meet certain financial thresholds (exceeds either a balance sheet total of 20 million euros or a net turnover of 40 million euros).
- This threshold is higher than the one currently applied by the Accounting Directives (i.e., 250 employees) in an attempt to strike a balance to limit any undue administrative burden while ensuring an appropriate scope to the reporting of these sorts of non-financial information.
- It is estimated that, on this basis, the new requirements would cover around 18,000 companies within the EU.

# Exemptions

- As specified in Article 1(b), those companies that prepare a comprehensive report for the same financial year shall be exempt from the obligation to provide this non-financial statement, provided that the report: (i) relies on national, EU-based or international frameworks; which (ii) ensure it covers the same topics and content required by Article 1(a); and (iii) is annexed to the Annual Report.
- Article 1(c) will exempt subsidiary companies from the obligations set out by Article 1(a); provided that the exempted company and any of its own subsidiaries, in turn, are consolidated in the annual report of another company and that consolidated annual report fulfils the requirements set out under Article 1(a).



“Some people call it keeping a second set of books. I call it *multitasking*.”



# Diversity

- A new paragraph 1(g) (in Article 46a of the Fourth Accounting Directive) will require large companies to provide information on their diversity policy, including aspects concerning age, gender, geographic diversity, and educational and professional background. The information is to be included in the corporate governance statement and will have to contain the objectives of such policy, its implementation and the results obtained.

# Information to be Disclosed

- Some members of the European Parliament have suggested that an amendment should be included in the Proposal to also add a financial reporting obligation that would cover full tax and financial country-by-country reporting obligations for listed and large non-listed extractive and logging companies. In particular, such companies would have to disclose all profits earned, taxes paid and subsidies received on a country-by-country basis.

# Information to be Disclosed Continued

- In a statement made on June 12, 2013, Commissioner Michel Barnier agreed that “it should be possible” to introduce these rules in the Capital Requirements Directive CRD IV or in the Commission’s proposal on improving the transparency of certain large companies on non-financial reporting.

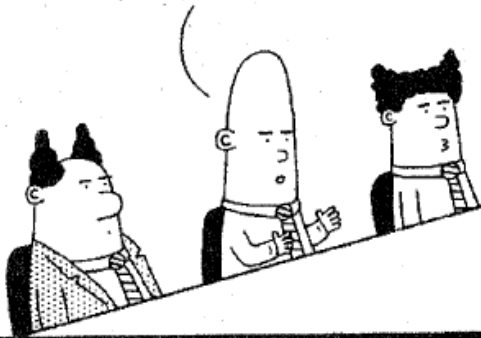
# Is this Directive “comply or explain” legislation?

- This Directive sets out a requirement. However, there remains significant flexibility.
- Companies not having a diversity policy will not be required to instate one; they will only be obligated to explain why they have none.



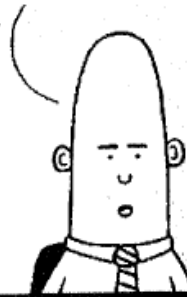
DILBERT

EMPLOYEES KEEP WHINING THAT WE DON'T HAVE A CLEAR DIRECTION.



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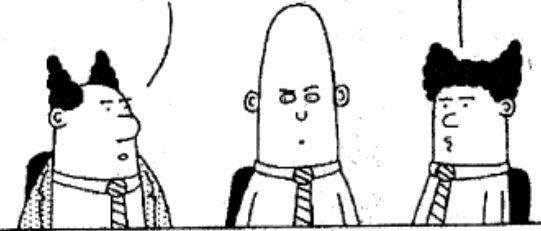
SO I'VE DOUBLED THE NUMBER OF MANAGERS IN EACH GROUP TO INCREASE THE CLARITY.



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I THOUGHT WE WERE DOUBLING THE DIRECTION.

NO, WE'RE DOUBLING THE CLARITY.



# Who will benefit from this measure?

## The Pitch:

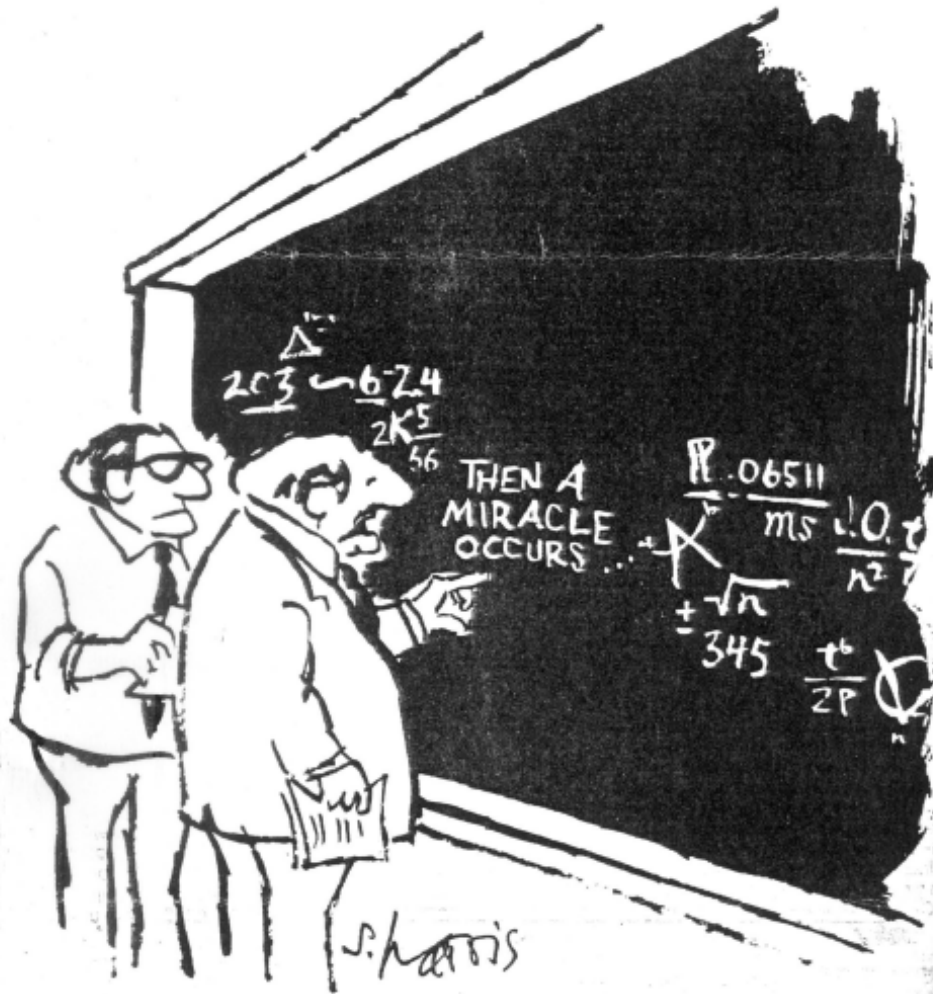
Each individual company that discloses transparent information on social and environmental matters are expected to realize significant benefits over time, including better performance, lower funding costs, fewer and less significant business disruptions, and better relations with consumers and stakeholders. Investors and lenders will benefit from a more informed and efficient investment-decision process. Society at large will benefit from companies managing environmental and social challenges in a more effective and accountable way.



# Costs?

- The European Commission estimates that the additional direct costs for large companies will be less than €5,000 per year.
- The European Commission also takes the view that this expenditure should be seen as an investment rather than a cost.

*Sledging Prows*



"I think you should be more explicit here in step two."

**JONES  
DAY**<sup>®</sup>



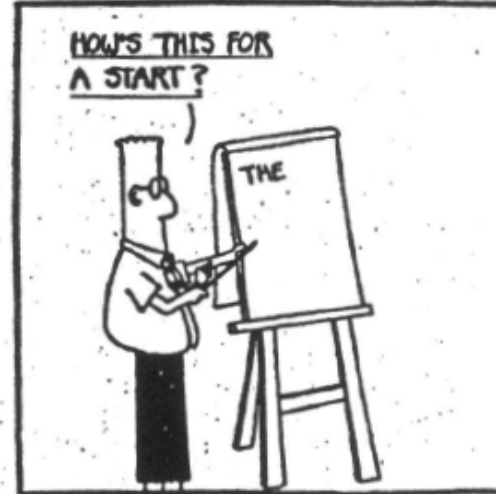
# When will this come into force?

- It is anticipated that the Proposed Directive will be adopted by the European Council and European Parliament, and transposed into Member State domestic legislation by 2016.
- First reports will be expected as from 2017. However, Member States will have the option to allow non-listed companies an additional year to comply. Member States will also be free to introduce more stringent requirements.

# THE BUREAUCRACY

## GROUP WRITING

FEW THINGS IN LIFE ARE LESS EFFICIENT THAN A GROUP OF PEOPLE TRYING TO WRITE A SENTENCE. THE ADVANTAGE OF THIS METHOD IS THAT YOU END UP WITH SOMETHING FOR WHICH YOU WILL NOT BE PERSONALLY BLAMED.



# References

- [http://ec.europa.eu/internal\\_market/accounting/non-financial\\_reporting/index\\_en.htm](http://ec.europa.eu/internal_market/accounting/non-financial_reporting/index_en.htm)
- <http://www.social-europe.eu/2013/04/a-step-but-not-a-leap-the-commissions-new-proposal-for-non-fianancial-and-diversity-reporting/>