

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Circular 13/18

Feedback Statement

Fitness Check EU Framework

Background

The EU framework for public corporate reporting is based on a number of EU Directives, Regulations and Recommendations including a range of financial and non-financial reporting requirements applying to listed and non-listed companies. In addition, there are sector specific requirements (banks and insurance) as well as disclosure requirements specific to listed companies. The legislation has been adopted at different points in time over the last 40 years and was amended several times mostly to address ad hoc issues.

The European Commission is conducting a comprehensive check to determine whether the EU framework for public reporting by companies is still fit for purpose (effective, relevant and efficient in achieving the intended objectives), fit for new challenges (such as sustainability and digitalisation), coherent and adds value at EU level.

As part of the overall fitness check, the EU Commission has carried out a consultation exercise. In this regard, the Authority would like to bring to your attention *the Feedback Statement of the fitness check on the EU framework for public reporting by companies*, published by the European Commission.

For ease of reference a copy of the report has been attached to this Circular.

Contacts

Should you have any queries on the above, please do not hesitate to send an e-mail on capitalmarkets@mfsa.com.mt.

Communications Unit
Malta Financial Services Authority
20 November 2018

**Summary Report of the Public Consultation on the Fitness Check on
the EU framework for public reporting by companies**

21 March 2018 - 31 July 2018

This document provides a factual overview of the contributions to the public consultation on the Fitness Check on the EU framework for public reporting by companies that took place from 21 March 2018 to 31 July 2018. The content of this document should not be regarded as an official statement of the position of the European Commission on the subject matters covered. It does not prejudice any feedback received in the context of other consultation activities.

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1. INTRODUCTION

Building vibrant capital markets and preserving financial stability in Europe are key priorities of the Juncker Commission. At the heart of any investment decision, timely and high-quality corporate reporting plays a vital role in ensuring the proper functioning of capital markets, by enabling key market players to make well-informed economic decisions.

The EU framework for public corporate reporting is based on a number of EU Directives, Regulations and Recommendations including a range of financial and non-financial reporting requirements applying to listed and non-listed companies. In addition, there are sector specific requirements (banks and insurance) as well as disclosure requirements specific to listed companies.¹ The legislation has been adopted at different points in time over the last 40 years and was amended several times mostly to address ad hoc issues.

IT developments and sustainability concerns have brought rapid changes in business environments over the last years. Investors have started to demand a broader range of information to **assess companies' long-term value creation**. These developments have given rise to a wide-ranging public debate about whether corporate reporting continues to fulfil its objectives and is keeping pace with social, economic and technological developments.

Against this background the European Commission is conducting a comprehensive check to determine whether the EU framework for public reporting by companies is still **fit for purpose** (effective, relevant and efficient in achieving the intended objectives), **fit for new challenges** (such as sustainability and digitalisation), **coherent** and **adds value at EU level**. This exercise is distinct from the Commission's ongoing Fitness Check on supervisory reporting by regulated financial entities, but is coordinated with it.

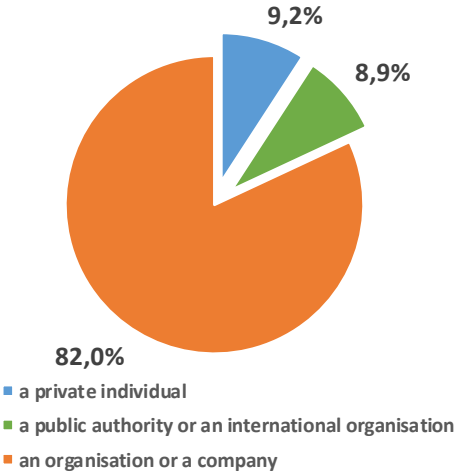
As part of the overall fitness check, the Commission asked stakeholders for their views on the EU public reporting framework in a public consultation launched on 21 March 2018. Given that it covered five different pieces of EU legislation, the consultation was broken down in thematic subjects and the consultation period lasted 4 months instead of 3 months. Stakeholders from 23 Member States and 25 third countries submitted **338 responses**. Not all of the 338 respondents responded to all 67 questions of the consultation.

The Commission services thank the respondents for their contributions. The present document is a synopsis of the results of the consultation and provides an overview of the main messages and issues raised by stakeholders. Contributions to this consultation will feed into the broader fitness check exercise that the Commission services are carrying out. The Commission will report on the overall fitness check in a Commission Staff Working Document by mid-2019.

¹ Public corporate reporting implies disclosure of information to the public at large, as opposed to supervisory reporting which requires reporting of information to a competent authority, without necessarily making it directly available to the public. Prudential rules can also include public disclosure requirements, such as Pillar III disclosures under CRD and similar requirements under Solvency II.

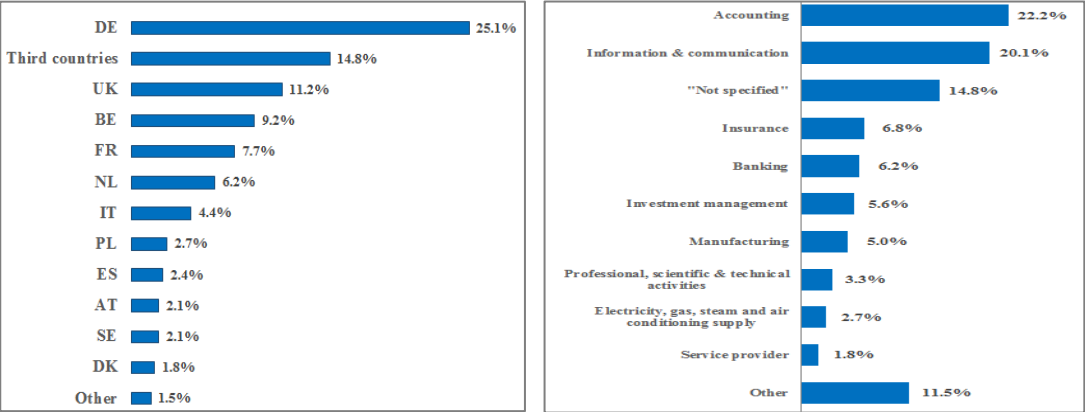
Overview of respondents' characteristics

The vast majority of respondents represent an **organisation or company** (82%), 9% are public authorities or an international organisation and the remaining 9% are private individuals. The type "organisation or company" comprises the main categories "company, SME, micro-enterprise and sole trader" (25%), "industry association" (25%) and "non-governmental organisation" (21%).



In terms of geographical coverage, over 60% of the responses were submitted by entities located in **Germany, the United Kingdom, Belgium and France**. From within the EU, no responses were received from stakeholders located in Latvia, Cyprus, Malta, Croatia or Greece. Concerning the sector of activity, most respondents were operating in the accounting area (22%), or otherwise in the information and communication sector (19%) as well as in the insurance and banking industry (13%).

Where are you based and/or where do you carry out your activity? In which sector?



As regards respondents, it is also important to note that:

- 25% were companies with cross-border activities;
- 16% were large companies within the meaning of the Accounting Directive;
- 16% were entities with securities admitted to trading on a regulated market or in an equivalent third country market;
- 10% were preparers of financial statements;
- 14% had to prepare a non-financial report.

Given the number of respondents, their geographical distribution and typology, responses to this consultation cannot be considered as statistically representative. Hence, in this report, responses were generally addressed from a qualitative angle. However where relevant, indications of relative strength may have been provided. In such cases, non-responses were disregarded.

Executive summary

For the majority of respondents, the EU framework for public reporting overall **brings added value**, is **coherent, effective** and **relevant** for achieving its **main intended objectives**: safeguarding stakeholders' interests, ensuring financial stability, developing the internal market, integrated EU capital markets and promoting sustainability. **However**, preparers of company reporting, especially from Germany, were relatively critical as regards costs compared to actual benefits when it comes to non-financial information and (future) electronic structured reporting. Hence, they believed the framework **could be more efficient**.

In terms of **developing the internal market and promoting integrated EU capital markets**, the *IFRSs* were considered to be effective as they helped reduce the cost of capital and increase investments in the EU.

Concerning the *Accounting Directive*, most respondents asserted that its differentiated implementation at national level – leading to different accounting frameworks – had limited effect on cross-border transactions, since these were primarily business driven. There was no widespread call from respondents on the EU to address those differences, but some proposed to use the *IFRSs* as a point of reference if the differences were to be addressed. About the ongoing debate on whether and how to integrate financial and non-financial reports in a meaningful way, most respondents answered that *integrated reporting* could indeed contribute to a more efficient allocation of capital and better decision-making.

Users generally found that the *digitalisation* angle was missing in EU legislation, such as for layouts and publication. In their opinion, pan-EU digitally structured and secured data could provide easier access and effectively contribute to well-functioning capital markets. A majority of respondents supported data re-use. Some suggested to work towards free access and open licence policies.

The concept of "minimum harmonisation" was not seen as a problem, as it accommodates different reporting cultures amongst Member States. Nevertheless, a majority thought that options for Member States in certain areas, notably for the *Transparency Directive*, hampered the quality and comparability of information.

Regarding **promoting sustainability**, many were concerned that this was not adequately addressed at global level and welcomed an EU leadership role. A majority of respondents agreed that the quantity and quality of non-financial information disclosed by companies remain relevant issues arguing that current disclosure practices might not meet the growing demand for data and information from investors and other stakeholders. A large number of respondents noted however that it was too early to say anything definitive about the impacts of the Non-Financial Reporting Directive, since this is its first year of implementation.

The extractive and logging industry questioned the effectiveness of the country-by-country reporting. Civil society supported it but were concerned about uneasy access and treatment of joint ventures.

Concerning the "*potential*" impact of *IFRSs* on sustainable investments, whilst a few believed *IFRSs* had led to pro-cyclicality and short-termism, a majority of respondents asserted that (to their knowledge) there was no evidence of such impacts. Several respondents pointed out that the broad criterion of "*being conducive to the EU public good*" should allow to adequately consider sustainability and long-term investment concerns during the endorsement process, though few saw a need to spell out specific sustainability and long-term investments endorsement criteria.

A majority of respondents supported the status quo as regards the **EU IFRS endorsement process**, and cautioned against "EU carve-ins" that could lead to "EU-IFRSs", a situation that could be detrimental to EU companies active globally and to foreign investments into the EU. Those who were in favour of "EU carve-ins" did not see why the EU should not enjoy this power whilst other jurisdictions do. Some of them argued that "carve-in" powers would increase the Union's ability to influence the IASB standard-setting process compared to the current "yes-no" endorsement process.

In terms of **safeguarding stakeholders' interests and ensuring financial stability**, a majority believed that the reporting framework could have some effective role, but saw prudential requirements as the most relevant way to address financial stability.

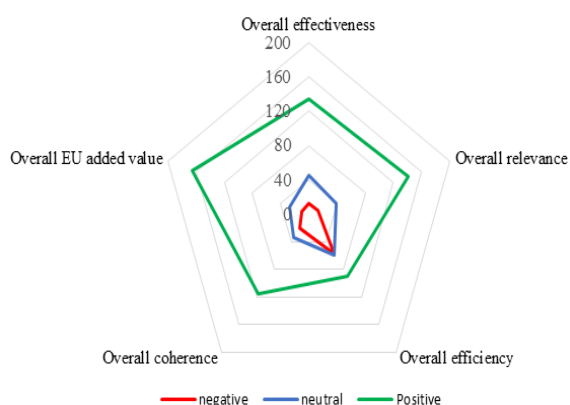
2. ASSESSING THE OVERALL BENEFITS OF THE EU PUBLIC REPORTING FRAMEWORK

Context: Stakeholders were asked whether the EU framework for public reporting by companies has been overall:

- **effective and relevant** for achieving the intended objectives (i.e. ensuring stakeholder protection, developing the internal market, promoting integrated EU capital markets, ensuring financial stability and promoting sustainability)
- **efficient** (i.e. costs are proportionate to the benefits generated)
- **coherent** having regard to each component of that reporting (financial statements, management report, non-financial information,...)
- **the right level to design policies in order to obtain valuable results, bringing EU added value**

Out of the 338 respondents, between 208 and 232 provided answers to questions 1 to 7 on the overall benefits of the EU reporting framework.

As shown by the chart below, a large majority of respondents considered that:



*The EU framework overall **brings added value, is effective and relevant** for achieving its objectives, **and is coherent**.*

*For preparers it **could be more efficient**.*

*The counterfactual would probably be more costly. Hence, some respondents indicated that there is **no need for changing the framework***

Overall effectiveness and relevance of the EU framework on public reporting

A very large majority of the respondents considered the current framework to be robust and **effective** in achieving its objectives of safeguarding stakeholders, developing the internal market and promoting an integrated (capital) market. For many, the effective contribution of the framework to the objective of promoting an integrated capital market was essentially **attributable to the EU IFRS policy** that contributed to reducing cost of capital and increasing investments within and into the EU. Whereas the Accounting Directive was considered effective in helping to safeguard stakeholders' interests, it was seen as less effective when it comes to the objective of an integrated capital market, mainly because of the greater flexibility offered to Member States. Member States' use of options and national additions to the Accounting Directive had inevitably led to less comparable national accounting frameworks.

On overall **relevance**, most respondents considered that the EU framework was relevant and appropriate for achieving the intended objectives.

Regarding **financial stability** and **sustainability**, several respondents underlined that given the global scale of those issues, a global framework rather than an EU framework would be more relevant. Some pointed out that adequate transparency (IFRS) ultimately facilitates financial stability behaviour by market participants while others argued that **IFRS** has led to pro-cyclicality and **short termism**. Several indicated that public reporting on its own can only have a **limited impact on sustainability** (and financial stability) and that other (direct) measures may be more effective. For example for financial stability, a few mentioned that EU sector specific prudential regulation is much

more relevant. Finally, several respondents cautioned against subordinating the true and fair view principle of financial reporting to financial stability and sustainability objectives.

Overall efficiency of the EU framework on public reporting

Several respondents considered that the EU reporting framework could be more **efficient** (without indicating how). Differences in views seem strongly correlated to the type of respondents. **Many preparers** indicated that the cascade of different reporting requirements is not always proportionate to the effects or commensurate to the size, complexity or national focus of companies. However, respondents did not specify to what extent the volume and complexity of reporting requirements could be attributable to national provisions adding to EU minimum harmonisation requirements. Preparers also expressed concerns about the cost compared to the benefits of non-financial information (NFI), country-by-country reporting (CBCR) and electronic structured reporting (European Single Electronic Format, ESEF). On the contrary, **civil society organisations** expressed their strong support for the current CBCR and NFI reporting requirements that they viewed as totally proportionate to the interests of stakeholders and society as a whole. Some preparers pointed out that cost estimations are often unrealistically low when the Commission proposes new requirements and called for any new reporting requirement to be compensated for by the deletion of another costly one. Whilst **investors** acknowledged the cost of reporting for companies, they underlined the benefits of reduced cost of capital. Several respondents mentioned that well-managed companies should have the required public information already available for internal reporting and therefore the incremental cost of public reporting would be moderate. Some respondents referred to **the counterfactual situation that would have been more costly for preparers and investors**: if an EU framework had not existed, different national reporting requirements would be in place and would have evolved in complexity over time. **Accountants** considered the public reporting requirements well balanced, about right and overall efficient. As for synergies, some respondents highlighted national practices of publishing reference documents for prospectuses that provided more information than required under the Transparency Directive.

Overall coherence of the EU framework on public reporting

Most respondents considered the EU framework as generally consistent. Several respondents pointed out that coherence is weaker for areas or components of public reporting based on “minimum harmonisation” in combination with Member State options. This had led to differences in practice with a subsequent lack of consistency and comparability. In this context, respondents referred to the management report, the corporate governance statement, and the reporting of non-financial information.

Overall, comments showed broad support for the concept of minimum harmonisation which allows for different cultures and traditions on (financial) reporting amongst Member States. However, respondents mentioned that Member States should keep additions to EU requirements to a minimum and synchronise the latter to a maximum. Not many respondents provided specific examples of “**top-ups**” but the most frequently mentioned **at EU level** were: the Solvency Financial Condition Report (SFCR) by insurance companies, the universal registration document of the 2017 Prospectus Regulation by listed companies, the reporting of (material) related party transactions under the shareholders rights Directive and country-by-country reporting by banks as required by the CRD IV. At **national level** detailed management reporting requirements and national non-financial reporting requirements were most mentioned. While several respondents pleaded for further aligning financial reporting and supervisory reporting, some noted that prudential requirements should not affect accounting.

EU added value in defining public reporting policies for different objectives

Virtually all respondents **considered the EU as the right level to set public reporting policies** when it comes to the objectives of developing an internal market, promoting an integrated capital markets and ensuring investor protection. For the objectives of protecting creditors and depositors, several respondents viewed on the contrary that it could be better dealt with at Member State level because of the importance of national legal frameworks and judicial systems. As regards **financial stability and sustainability** objectives, while many considered that these could be better dealt with at global level, several supported an EU leadership role. Several respondents also pointed out that whilst the EU level is appropriate for many of the objectives, there should be room for Member States to go beyond EU requirements, for example in the area of sustainability. Some noted though that Member State additions should be done in a coordinated manner. International investors and international businesses emphasised that gold plating by Member States created complexity and hindered comparability. Some respondents emphasised **the need for EU action on digitalisation and open company registrars to secure efficient (free) access to company information.**

3. THE FINANCIAL REPORTING FRAMEWORK APPLICABLE TO ALL EU COMPANIES

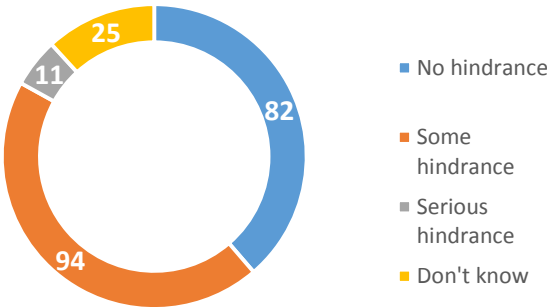
*Context: Companies’ individual financial statements are generally based on national Generally Accepted Accounting Principles (GAAP), resulting in part from the Accounting Directive. National GAAP are generally the basis for taxation, dividend distribution, capital maintenance and bankruptcy rules. The resulting variances across the EU may hinder companies’ freedom of establishment in the EU or their capacity to do **business across borders.***

Questions to stakeholders were as follows:

- to what extent do the addition of, and differences in, national reporting rules hinder the ability of companies to do **cross border business** within the EU and their impacts, if any;
- to what extent **tax and accounting rules** could be aligned;
- possible ways of reducing national variances and lacunas in current GAAP as well as groups’ administrative burden;
- whether the **SMEs** were sufficiently well considered, and
- whether the **content of information** disclosed by companies was relevant.

Between 83 and 215 respondents provided answers to questions 8 to 18 on the framework applicable to all companies. Respondents tended to consider that overall, the EU approach already struck the right balance between preparers’ costs and users’ needs.

Do differences in national GAAP hinder cross border business ?



While respondents acknowledged **differences** from one national GAAP to another, most asserted that this had had **no tangible effect on cross-border investment decisions and transactions**, which are mainly business driven. Differences might however have implied internal and external barriers as well as additional costs² which, cumulatively, might have resulted in a

² Main ones include data consistency, the need for extensive IT customisation and for external expertise, over-auditing for groups, compliance risks, burden for groups’ shared services centres, hiccups with data storage or language.

proportionally higher burden for SMEs than for larger companies.

When doing business across the EU, differences in the determination of taxable corporate income (tax rules) was cited, mainly by companies (preparers), as slightly more problematic than differences arising from accounting rules. Respondents referred to the Commission proposal for a Common Corporate (Consolidated) Tax Base to achieve further harmonisation of tax rules. Nevertheless, whilst recognising that aligning accounting and tax rules could represent a non-negligible relief for companies, most respondents supported these rules to remain separate as they pursue different objectives (state revenue collection vs disclosure of companies' performance / capital remuneration). Conversely, accounting rules did not need to be harmonised to ensure or facilitate a harmonised tax base across the EU.

Respondents recognised gaps³ in the Directive, but a majority of respondents did not believe there was a need to address these as a matter of priority. **Respondents generally cautioned against addressing differentiated implementation of, or gaps in the Accounting Directive.** However if the EU were to address these, a number of respondents recommended reducing Member State options as a potential way forward, and/or using the IFRS as an anchor point. For instance, it could be envisaged to further align the Accounting Directive with the IFRS; to grant a right to companies, in particular groups, to apply the IFRS (or IFRS "light") instead of national GAAP (in which case, issues with taxation or other rules would have to be addressed); to impose the IFRS in specific situations, such as for individual financial statements of listed companies. Most saw only limited or no added value of a pan European Conceptual Framework.

As regards the content of financial reporting, preparers and users of financial information alike considered **the current content of financial reporting as relevant**⁴. Nevertheless, some companies and regulators observed a growing demand for more and better information⁵, especially from large companies, that could improve the efficiency of capital allocation.

An overwhelming majority of respondents cautioned against defining, prohibiting and/or requiring the disclosure of Alternative Performance Measures (APM) at the EU legislative level. Reasons for this were that companies need flexibility, and that the International Accounting Standards Board (IASB) and market regulators were already working on this efficiently at international and EU level.

Small and Medium-sized Enterprises (SMEs)

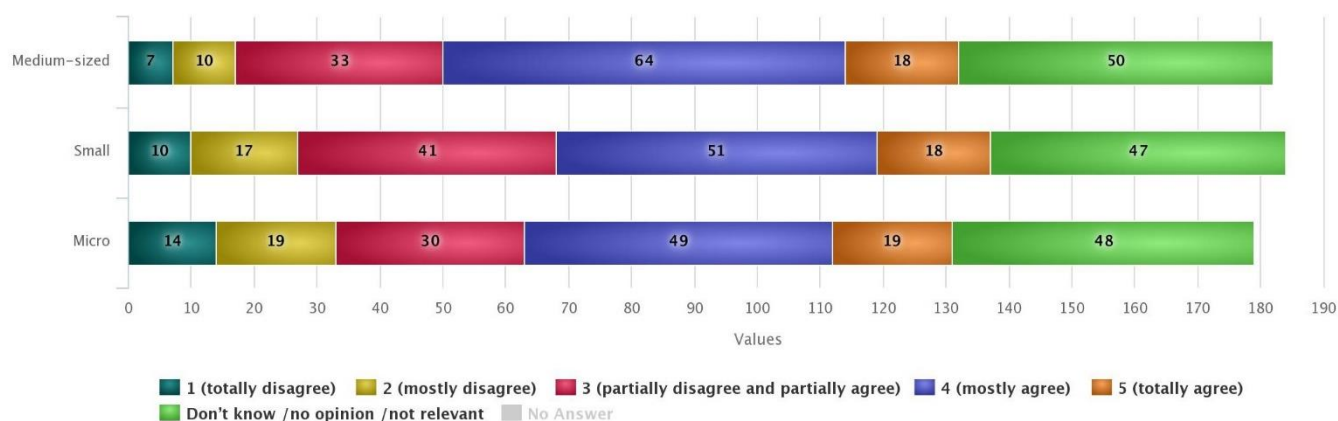
Many believed that the EU approach was proportionate by reflecting the size of the preparer, as shown in the figure below.

³ Including cash flow statement, leases, disclosures on intangibles, dividend distribution policies.

⁴ Including on items such as a company's or group's strategy, intangible assets, dividend policy and cash flows

⁵ Of interest are the various elements of an entity's business model: leadership, innovation, strategy, return on investments, growth/size/scale, differentiation as well as certain specific items such as lobbying expenses, donations or public subsidies.

Do you agree that the EU approach is striking the right balance between preparers' costs and users' needs, considering the following types of companies?



Whilst preparers estimated that information disclosed could be even further reduced, a number of users (information providers, rating agencies, analysts, banks ...) criticised the scarcity of information given by micro and small entities as well as the difficulties in accessing their financial statements in certain jurisdictions.

A slight majority of respondents saw issues with the currently uneven standardisation and harmonisation of SME definitions in the EU approach, which could in their opinion, impair comparability and equal treatment of SMEs within the EU and also reduce legal certainty and policy coherence for SME development. Some stated that there was a lack of meaningful policy clusters (i.e. mid-caps, non-listed SMEs, ...). Others thought that one size may not necessarily fit all and that cumulative effects triggered by harmonised definitions might impinge on the growth of companies.

4. THE IAS REGULATION AND INTERNATIONAL FINANCIAL REPORTING STANDARDS (IFRS)

Context: The current EU IFRS endorsement process prevents the Union from modifying the content of the IFRS standards as issued by the IASB. However, while the initial objective was to reach a **single global set of international standards**, the current level of commitment to IFRS by third country jurisdictions differs significantly. Very few jurisdictions actually require the use of IFRS as issued by the IASB.

Under this section, the consultation sought stakeholders' views as to:

- whether the EU IFRS endorsement process should allow for "carve-ins" (i.e. for modifying the content of a standard);
- whether the current endorsement process poses an obstacle to broader EU policy objectives such as sustainability and long term investments;
- whether an EU conceptual framework should underpin the IFRS endorsement process or whether the EU should endorse the IFRS conceptual framework;
- whether a minimum layout requirement for IFRS financial statements would enhance comparability.

Between 206 and 239 respondents provided answers to question 19 to 24 on the IAS regulation.

Whilst a majority of respondents (172) were against introducing EU flexibility via "EU carve-ins". (compared to 49 in favour), there are important geographic differences. 75% of the respondents located in France would support adding EU IFRS flexibility (to be used only in exceptional situations) while only 15% of the respondents located in Germany would support adding EU flexibility (same for the UK, the Netherlands). The uneven distribution of the responses mentioned earlier in the report,

is also manifest here. The number of responses from Germany (85) was more than three times higher than the responses from respondents located in France (26). Respondents who did not see the need to change the current restricted endorsement powers argued that “EU carve-ins” could lead to an “EU-IFRSs” situation. This would be detrimental to EU companies active globally and to foreign investments into the EU. They also believed that it would hamper the achievement of the G20 objective of a single global high quality accounting framework. However, they emphasised the importance of increased EU involvement in the IASB standard setting process.

Other respondents on the contrary, considered that “**EU carve-ins**” would create adequate sovereignty over rulemaking, which could be beneficial for the EU economy. For them, there was no reason why the EU should not enjoy this power while other jurisdictions do. Some of them complained that the IASB sometimes neglects serious concerns and argued in this light that an “EU carve-in” power would increase the EU’s ability to exercise influence during the IASB standard setting process compared to the current “yes-no” endorsement process. Virtually all respondents indicated that “EU carve-ins” should be applied in very limited and well-defined circumstances, under strict conditions and with a sound (public) decision making process.

A very large majority of respondents agreed with the importance of **sustainability and long-term investment** policy objectives, which should be considered during forthcoming endorsement processes. Whilst IFRS public reporting could be seen as contributing to the broader objective of sustainable finance and long-term investments, many recalled that this is only to a certain extent. Several asserted that there **was no evidence** that the current IFRS framework would hamper sustainability and long-term investments. As to the IFRS endorsement process, several respondents pointed out that the broad criterion of “*being conducive to the EU public good*” should be adequate for considering sustainability and long-term investments concerns. Few respondents on the contrary saw a need to add sustainability and long-term investments as specific endorsement criteria, pointing out that IFRSs induce short termism.

A large majority of respondents questioned whether **an EU conceptual framework should underpin the IFRS endorsement**, as it would be time consuming, and would add complexity and bureaucracy. There was also not much support for the EU to endorse the IASB conceptual framework, mainly because the conceptual framework is not binding for IASB standard setting and endorsing it at EU level would create more legal issues than it would resolve.

Finally, respondents expressed very mixed views about setting a **mandatory minimum layout** for IFRS financial statements. Views were divided between users (i.e. investors) who were mostly in favour, outlining that it would enhance comparability, as opposed to preparers who were mostly against it, arguing the need to keep flexibility to properly represent their business model.

5. THE EU FINANCIAL REPORTING FRAMEWORK FOR BANKS AND INSURANCE COMPANIES

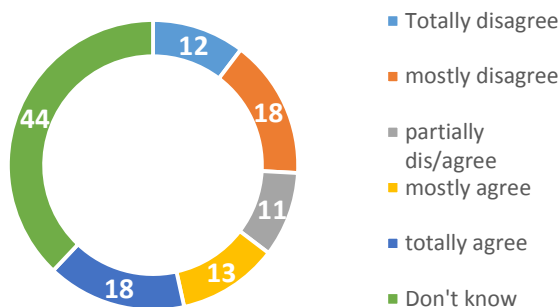
Context: The Bank Accounts Directive (BAD) and the Insurance Accounts Directive (IAD) were adopted respectively in 1986 and 1991. Since then, the increasing use by Member State of the option to require IFRSs for non-listed banks under the IAS Regulation and the introduction of the Solvency II prudential regime for insurance undertakings have reduced the relevance of the Directives in achieving European-wide comparability of financial statements. Moreover, the Directives have also lost relevance over time as they have not been updated to include more recent accounting treatments, for example on expected credit loss, leases or revenue recognition for digital activities. Finally, the public reporting Framework applicable to insurance undertakings requires listed insurance groups to prepare multiple sets of financial statements, raising concerns about overlaps and other potential inefficiencies. The consultation therefore sought the feedback of respondents about:

- extending the scope of the requirement to use IFRSs for regulated entities;
- granting specific options or exemptions for the banking subsidiaries of listed groups ;
- further harmonizing the European framework;
- Potential inconsistencies between the existing pieces of legislations.

Between 92 and 122 respondents provided answers to questions 31 to 39 on the EU reporting framework for banks and insurance companies. For several questions pertaining to the BAD, a significant number of responses were quite similar and concentrated mainly from Germany.

The Bank Account Directive (BAD)

Is the Bank Accounts Directive effective, relevant, coherent and proportionate?



Overall, a slight majority of respondents considered the BAD still fit for purpose. Despite some decrease in relevance over time, its common layout and definitions were still deemed to improve comparability. Several respondents considered that no changes to the BAD were necessary beyond ensuring its consistency with the Accounting Directive.

Respondents were equally divided as regards the desirability of replacing the BAD by a mandatory requirement to use IFRSs. Opponents questioned the proportionality and the cost benefit trade-off of such a change, stressing the risk of a detrimental effect on smaller banks. A majority of respondents was in favour of granting a European-wide option for banks to choose IFRS for preparing their annual accounts with a view to improving the efficiency of the consolidation process. However, some respondents stressed that widening the use of IFRSs either on a mandatory or optional basis would require reconciling IFRS statements with national tax and profit distribution rules and regulations, thus significantly limiting the expected efficiency gains. There was no consensus in favour of introducing additional accounting treatments in the BAD in order to improve comparability. Finally, the majority of respondents were against exempting bank subsidiaries from the requirement to publish annual financial statements, stressing that it would jeopardize the protection of stakeholders without significant expected operational benefits.

The Insurance Account Directive (IAD)

Similarly to the BAD, respondents to the consultation considered that the IAD provides for only limited comparability through its mandatory lay-out and notes to the financial statement. They also pointed out that the Directive had lost some relevance over time and raised consistency issues with more recent frameworks. Yet respondents were overall positive about the cost-benefit trade-off reached by the IAD, acknowledging that the directive was a compromise between the needs of various stakeholders, including a strong interplay with the taxation and dividend distribution rules set by Member States.

A majority of respondents considered that the endorsement of IFRS 17 *insurance contracts* would raise consistency issues with some provisions of the IAD thus preventing Member States from harmonizing their national GAAPs with the new standard. However, some stakeholders also stressed that the IAS Regulation already enables Member States to opt for the mandatory or optional

application of IFRSs. A significant majority of respondents did not favour harmonizing the IAD with the Solvency II prudential framework. Both were deemed to pursue different objectives thus justifying different sets of measurement and reporting requirements. However, some respondents highlighted some duplication of information between the IAD disclosure requirements and the Solvency and Financial Condition Report (SFCR) required by Solvency II. As to potential convergence towards IFRS 17 – Insurance Contracts, respondents generally recommended consideration of further convergence only after more experience is gained from the implementation phase of IFRS 17. Finally, a significant majority of respondents disagreed with granting an option to apply Solvency II valuation principles in the IAD as it was expected to further impair the comparability of financial statements.

6. THE TRANSPARENCY DIRECTIVE

Context: The Transparency Directive requires issuers of securities traded on EU regulated markets to ensure appropriate transparency through a regular flow of information to the markets. The Transparency Directive was last amended in 2013 in order to: (i) reduce the administrative burden on smaller issuers and promote long-term investment by abolishing the requirement to publish quarterly financial reports; and (ii) strengthen investor protection by improving the efficiency of the disclosure regime of major holdings of voting rights.

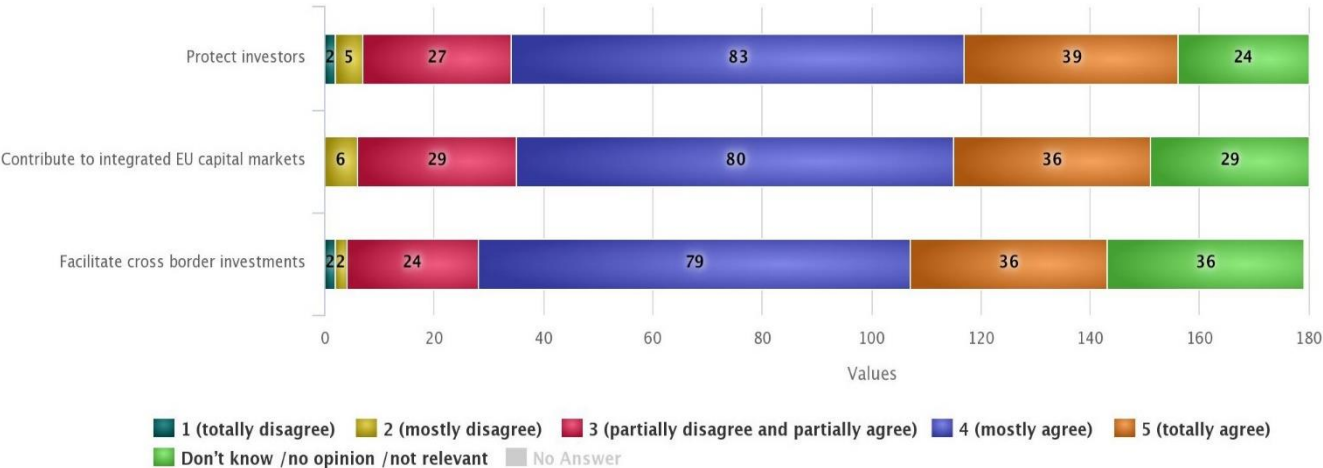
Under this section, the consultation sought stakeholders’ views as to whether:

- *the Transparency Directive is overall effective;*
- *the abolition of the quarterly reporting obligation contributed to reducing the administrative burden, maintaining an adequate level of transparency and investors’ protection, and promoting long-term investment, long-term and sustainable value creation and corporate strategies;*
- *the notification regime of major holdings of voting rights is coherent and effective in strengthening investor protection and preventing market abuse; and*
- *anything should be done to improve public reporting by listed companies.*

Between 104 and 189 respondents provided answers to questions 25 to 30 on the Transparency Directive.

The large majority of respondents believed that the **Transparency Directive** was effective in protecting investors, contributing to integrated EU capital markets, and facilitating cross-border investments, as seen in the figure below.

Do you agree that the Transparency Directive requirements are effective in meeting the following objectives, notably in light of increased integration of EU securities markets?



Criticism coming from the minority of respondents concerned the complexity of requirements, compliance costs, and information overload, which tends to impair transparency. A few respondents

also believed that there was lack of coherence between Member States' legislation as regards the ongoing information on major holdings of voting rights, the administrative measures and sanctions, and the yearly and half-yearly financial information. They argued that this phenomenon could jeopardise to some extent the policy objectives of the Transparency Directive.

Some respondents underlined that the **impact of abolishing the quarterly reporting requirement** at the EU level might be difficult to assess since some Member States continue to impose this requirement as permitted by the Directive, and most large listed companies continue to provide detailed quarterly reports on a voluntary basis. However, the majority of respondents agreed that abolishing the quarterly reporting requirement contributed to reducing the administrative burden for companies, without any detrimental impact on transparency or investor protection. Most companies appreciated the possibility of providing – on a voluntary basis – customized information that is relevant to investors without being required to disclose standardised information. The majority of respondents were of the view that abolishing the quarterly reporting requirement does not contribute to promoting long-term investment and long-term sustainable value creation and corporate strategies. Many of them did not see a significant link between quarterly reporting and the trend towards short-term business decisions and believed that the strategy of a company does not necessarily depend on the frequency of public reporting. A few respondents suggested alternative methods for promoting long-term investment and corporate strategies, such as introducing tax incentives to hold shares for longer periods.

The vast majority of respondents agreed that the existing **notification regime of major holdings of voting rights** is effective in both strengthening investor protection and preventing possible market abuse situations. Some suggested ensuring that the EU framework is kept up to date to take into account the increased complexity of instruments that give a deferred or potential access to voting rights. A few respondents underlined the need to establish a more proportionate approach for SMEs, and to establish a mandatory standard form for reporting. The large majority of the respondents agreed that the disclosure and the notification regime of major holdings of voting rights in the Transparency Directive is coherent with EU company law, the Shareholders' rights directive, the Market Abuse Regulation (MAR), and other EU legislation. A minority of respondents identified a possible lack of coherence between the requirements under the Transparency Directive and some requirements under the MAR, such as the disclosure requirements for financial information and inside information, and the related sanctioning regimes.

As regards possible improvements to the Transparency Directive, a majority of respondents suggested to **improve the consistency of the legislation across Member States** and data comparability in some areas such as transparency on holdings, thresholds for proportion of voting rights, or the exemption regimes. Other suggestions included simplifying the reporting requirements while avoiding instances of double-reporting, creating a level playing field with third countries (also by encouraging more countries to adopt the IFRS), promoting the digitalisation of financial reporting while maintaining integrity of information and adequacy of related costs, and further integrating corporate reporting (non-financial and financial information).

7. NON-FINANCIAL REPORTING FRAMEWORK

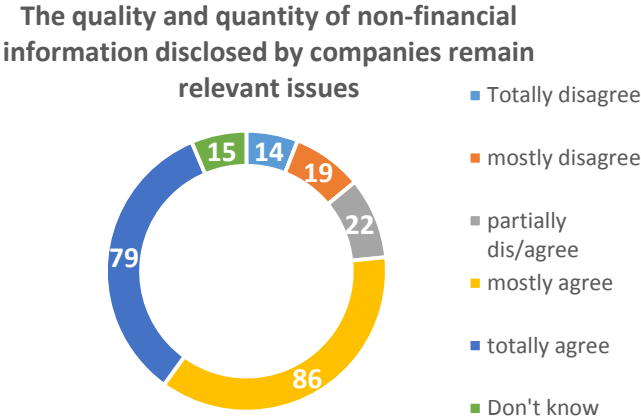
***Context:** The Non-Financial Reporting Directive (NFRD) requires around 6.000 large (groups of) companies with more than 500 employees listed on a regulated market or operating in the banking or insurance sectors to disclose relevant environmental and social information in their management report.*

*Respondents were asked about the **relevance** and **effectiveness** of the Non-Financial Reporting Directive, and about its **costs** and **benefits**, as well as its **scope** of application. They were also asked*

about the related Non-Binding Guidelines on non-financial reporting that the Commission published in 2017.

Between 220 and 236 respondents provided answers to questions 40 to 50 concerning non-financial reporting. A large number of respondents stated repeatedly that in their view it was **too early to say anything definitive about the impacts of the Non-Financial Reporting Directive**, since 2018 is the first year that companies in scope have to report according to its provisions (for financial year 2017). Many went on to say that it was too early to consider any kind of revision, and that stability was needed, while other respondents suggested the Directive should be revised in various ways.

Relevance of issues addressed by the Non-Financial Reporting Directive



A clear majority of respondents agreed that the **quantity and quality** of non-financial information disclosed by companies **remain relevant issues**. A wide variety of stakeholders argued that current disclosure practices do not meet the growing demand for data and information from investors. Non-Governmental Organisations (NGOs) and trade unions argued that the issues remain relevant because of perceived weaknesses in the Directive. A small minority of respondents,

mainly enterprises and business associations, believed that the quantity and quality of non-financial disclosure are not relevant issues, because they were already resolved by national legislation or by voluntary corporate reporting practices.

About half of respondents at least partially agreed that the diversity of boards, and boards’ willingness and ability to challenge senior management decisions, **remain relevant issues**, while a small minority disagreed. Many respondents stressed the need for more sustainability expertise in company boards. Some respondents argued that boards have in any case become more diverse in recent years. Some respondents argued that the disclosure requirements should be extended to the top management levels of the company and should include disability. A minority of respondents considered that diversity of boards should not be regulated.

Effectiveness of the Non-Financial Reporting Directive

Just over half of respondents believed that the Directive will be **effective** in **enhancing company accountability**, while slightly less believed it would enhance the efficiency of capital markets or company performance.

A variety of stakeholders expressed the view that the overall effectiveness of the Directive would be limited because it does not impose a specific reporting framework and leaves a **high degree of flexibility** both to Member States and to companies. Many companies and business associations welcomed this flexibility. Some respondents argued that the overall effectiveness of the Directive will be limited by the absence of a strong assurance and verification requirement. **A wide variety** of stakeholders argued that the Directive does not adequately define **the concept of materiality**.

Respondents expressed significantly different opinions about whether there was a link between company performance and non-financial disclosure. Some respondents commented that the

Directive had already had a noticeable effect in terms of raising awareness of Environmental, Social and Governance issues in companies at board level.

In terms of the information disclosed by companies, respondents were most positive about the effectiveness of the Directive in leading to timely disclosures and were least positive about its effectiveness in enhancing comparability. Many companies and business/industry associations questioned whether improved comparability was a legitimate or realistic objective.

Some companies expressed the view that the Directive leans more towards the disclosure of negative impacts than positive impacts. Some other stakeholders believed that companies will under-report actual or potential negative impacts.

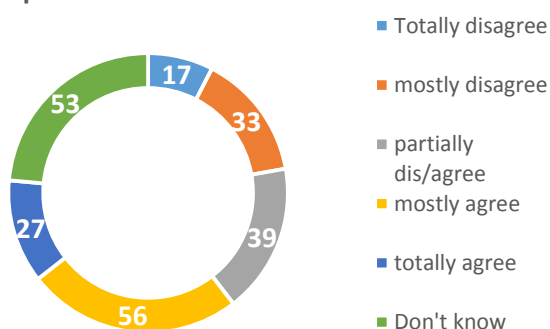
As regards the effectiveness of the Directive's disclosure framework in improving the gender balance of company boards, a large part of the respondents replied “do not know”. Among those that provided a substantial response, slightly more respondents agreed than disagreed that the Directive would be effective in increasing diversity on company boards, or in improving gender balance on boards. However, many respondents stated that legally binding gender quotas are more effective.

Coherence of the EU framework for non-financial disclosure

Significantly more respondents agreed that the EU non-financial reporting framework **was sufficiently coherent** compared to those who disagreed or did not know. Respondents who felt the framework was not sufficiently coherent argued that the Directive was imprecise on some issues and/or left considerable flexibility to Member States. A few respondents stated that some companies have found divergent transposition of the Directive burdensome. Financial institutions and their representative bodies argued that all non-financial disclosure requirements should be located in the same piece of legislation.

Costs and benefits

Are the cost of disclosure under the NFRD proportionate to the benefits?



When asked whether the costs of the Directive were proportionate to the benefits, more respondents agreed than disagreed. Just under half of respondents said that the Directive has a positive impact on the competitiveness of European companies. Very few companies gave figures for the cost of compliance with the Directive, and there was an extremely high level of variation in the figures that were given⁶.

A large number of companies and business associations, especially from Germany, stated that the administrative costs to companies of the Directive far outweighed the benefits, and argued that the Directive will negatively impact the competitiveness of EU companies unless non-EU companies have to meet the same requirements. A small number of companies stated that the incremental costs of the Directive were not significant. In the opinion of some respondents, the incremental costs to companies will vary considerably depending on the previous non-financial practices of the company.

Some respondents cited perceived benefits to business of non-financial disclosure, such as better information for decision-making and avoidance of future costs and liabilities. Some business

⁶ from less than €100 to over €1.000.000

associations and companies doubted whether such benefits existed. Representatives of NGOs and trade unions argued that enhanced corporate transparency and accountability should benefit people at risk of negative impacts from business, and that society and the environment bear the costs of business not accounting for negative impacts. Concerning the question as to whether the NFRD could indirectly increase the reporting burden for SMEs, as a result of larger companies requiring additional non-financial information from their suppliers, there was widespread agreement amongst respondents that **there was increasing demand on SMEs to provide non-financial information**. Respondents were however divided on whether or not the Directive has significantly contributed to this trend.

Scope

A small minority of respondents agreed that the scope of application of the Directive (public interest entities with over 500 employees) was appropriate, and about half partially agreed and partially disagreed. Some respondents, mainly from business, argued that the scope of application of the Directive was reasonably adapted to the size and impacts of companies. A number of respondents argued that large non-listed companies should be included in the scope of the Directive. Some respondents argued that SMEs should be included, while other respondents argued against this. Trade unions argued that the companies addressed by the Directive represent only a limited proportion of EU employment and production. Some respondents believed that small credit institutions and insurance companies, or those operating at a regional level, should be excluded from the scope.

The non-binding Guidelines on Non-Financial Reporting issued by the Commission

A minority of respondents agreed that the Non-binding guidelines on non-financial disclosure adopted by the Commission in 2017 have helped to improve the quality of disclosures. Many respondents found the guidelines most useful for companies that have never produced a non-financial information report. Many companies and business associations argued that the guidelines should remain flexible and not inhibit innovation. Some respondents thought that the guidelines help to clarify issues such as materiality and reporting about supply-chain information, while others found the guidelines insufficiently precise on these and other issues. Replies did not reveal a clear preference for any particular issue to be prioritised if the guidelines are further revised after the revision in 2019 with regard to climate-related information.

8. COUNTRY-BY-COUNTRY REPORTING BY EXTRACTIVE AND LOGGING INDUSTRIES

Context: Since 2017, companies that are active in the extractive industry or in the logging of primary forests have to be more transparent on the payments they make to governments, as a way to help governments of resource-rich countries to manage their resources as well as to enable civil society to better hold governments and business into account.

Under this section, the consultation sought stakeholders' views on the effectiveness, efficiency, relevance, coherence, EU added-value of the policy, as well as its costs and impacts on competitiveness

Between 153 and 164 respondents provided answers to questions 51 to 53 concerning country-by-country reporting. Only five respondents provided information on their compliance costs.

A vast majority of respondents saw the country-by-country reporting (CBCR) by extractive and logging industries as **efficient, relevant** and **coherent**. Many praised the EU added-value but since only a few third countries have similar provisions, some believed that only a global initiative would enable a level playing field.

There were **mixed views as regards the effectiveness** of the policy in the extractive sector, for a number of reasons. First, companies and NGOs tend to recall that the policy is very recent, which makes any assessment difficult as effects will be felt in the long run. Second, companies believed that one has to examine what was effectively achieved on the ground. On that front, NGOs reported many examples of data being used across the world to hold industry and governments to account for public natural resource revenues, or to educate and empower citizens, and hailed the policy's deterrent effects. The objectives of the policy were not clear for certain respondents: was it aiming to fight corruption? To reduce the cost of capital? Was it for the benefit of the EU citizens? The policy was largely seen as **ineffective in the logging sector** because it is seldom that an EU company would log primary forests, partly due to the way the business operates, and partly because primary forests are defined narrowly in the law.

The industry generally saw the policy as inefficient and called either for the repeal of the policy or, at least, for maintaining the status quo but with reduced complexity. A few respondents provided some evidence about their preparation costs⁷.

Civil society took the opposite view. They saw benefits that are worth the costs, and suggested ways to improve reporting, for instance by: (i) implementing central access; (ii) ensuring higher quality and comparability by clarifying the treatment of joint ventures, the definition of projects or the identification of governments; (iii) providing the basis for preparation and further narratives in the report; (iv) requiring assurance (e.g. audit).

Respondents also expressed quite **mixed views on possible impacts on the competitiveness** of reporting companies. Some respondents (generally companies) stressed that the EU policy puts them at a competitive disadvantage with non-EU competitors, be it only for the costs or increased tax audit risks. NGOs are generally not convinced that there is a correlation between public reporting and standard measures of competitiveness, or if there is they argue that the correlation is rather positive.

9. INTEGRATED REPORTING (IR)

Context: In addition to a demand to broaden the range of information to be included in corporate reports, there is an ongoing debate on whether and how to integrate financial, non-financial, and other related reports in a meaningful way.

Respondents were asked about the costs and benefits of integrated reporting, about whether the EU should encourage integrated reporting and whether the existing EU framework inhibits integrated reporting.

Between 104 and 217 respondents provided answers to questions 54 to 56 concerning Integrated Reporting. Different stakeholders have a different understanding of what integrated reporting is, which complicates the interpretation of the replies to these questions in the consultation.

Just over half of the respondents believed that integrated reporting could contribute to a more efficient allocation of capital (through improved quality of information to capital providers), and a similar proportion believed it could contribute also to better decision-making and risk management in companies. A minority of respondents believed that integrated reporting would lead to costs savings for report preparers or for users, with views considerably more negative in the case of possible cost savings for preparers. **Just under half of the respondents believed that the costs of integrated reporting are proportionate to the benefits**, while a quarter disagreed.

⁷ In the range of €47,000 to €1,000,000 (set-up) and €26,000 to €500,000 or more (recurring) according to respondents

Just over half of the respondents agreed that the EU should encourage integrated reporting. Most business representatives called for integrated reporting not to be imposed by regulation. A clear majority of respondents believed that the existing EU framework on reporting is no obstacle for companies to move towards integrated reporting, and only a small minority believed the opposite. Many respondents argued that the Non-Financial Reporting Directive encourages integrated reporting because the management report is the default location of the non-financial statement. At the same time, the fact that most Member States allow companies to publish the non-financial statement in a separate report was believed by some stakeholders to be contrary to the promotion of integrated reporting.

10. THE DIGITALISATION CHALLENGE

Context: Digitalisation is soon to become reality for issuers with securities listed on European regulated markets (“listed companies”) through the introduction of the European Structured Electronic format and possibly a single European Electronic Access Point.

Stakeholders were asked for their views on this ongoing development, and on whether more should be done in terms of data structuring, electronic seals, scope and “file only once” principle.

Between 113 and 205 respondents provided answers to questions 57 to 66 on the digitalisation challenge.

The majority of respondents believed that existing **EU legislation** is **not an obstacle** to the development and free use of digital technologies by companies in the field of public reporting. Likewise, it does not encourage better use of digital technologies either. Respondents pointed to various areas in which the EU could examine the impact of digitalisation such as bookkeeping, data-storage, publication requirements, easier access or layouts. Also digitalisation could have an impact on the pace of EU law updates. A Member State was exploring whether, instead of conveying information via annual financial reports, an alternative could be to provide stakeholders with relevant and up-to-date financial information through direct access at the source granted by any company that volunteers.

The majority of respondents considered that the use of modern technologies to support pan-EU accessible data would **improve investor protection, promote market efficiency** including in cross-border situation, would foster transparency, make access easier and improve the relevance of listed companies’ reporting. In addition, there was widespread support by users to open access to digital data.

As regards **electronically structured data**, many companies and business associations questioned whether users would use it. Others (accounting firms, governance associations, civil society, analysts, investors and market places) believed on the contrary that structured data would be easier to use, possibly with new functions, thus support better decision making.

There were **mixed views about costs**. As regards compliance costs for preparers, some respondents asserted that to achieve cost reduction for preparers (in the region of 7% to 15% according to one source), electronic reporting should become the unique trusted primary source of information for users, based on highly standardised formats and information. As regards access costs, many respondents saw the benefits of structured electronic data in reducing costs, mainly in two ways: easier direct access to data (disintermediation), and lower costs for data providers. On this basis, certain professional associations and standard setters estimated that the overall reduction in access costs could reach 25% to 75% over time, especially in cross border situations.

Some were wary of the possible **multiplication of digital reporting standards** at the EU or global level, while others thought that common global standards and data formats could add unnecessary

technical constraints and rigidity leading to less relevant information for stakeholders. The least the EU could do is to strive to better align definitions in EU law. Also, some respondents thought that the EU should better consider the interplay of labels and concepts used for supervisory purposes. A few respondents thought that the EU should further address the audit of digitalised information.

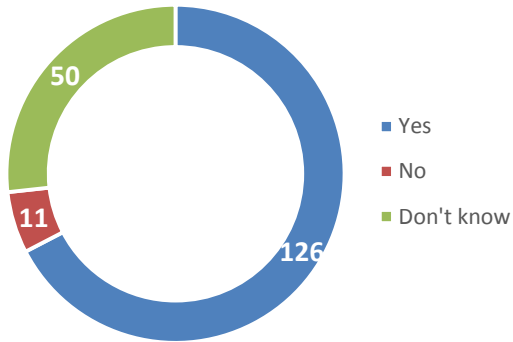
Overall, respondents took a rather supportive stance as to **expanding electronic data structuring to other documents** than the annual financial report. Some suggested also structuring information reported by listed companies such as certain market abuse announcements, earnings releases, prospectuses, half yearly reports or quarterly results (voluntary). Some flagged audit reports as well. Many believed that electronic structuring is well suited to figures, but were wary that, due to the entity and industry specific narratives, management or corporate governance reports could have **reduced usability and relevance** if structured electronically.

The majority of respondents believed that the **digitalisation of non-financial information could facilitate access to information** by users and increase the granularity of the information disclosed. In particular, it was suggested that such information could be packaged with the GRI (Global Reporting Initiative) taxonomy and iXBRL⁸ (block) tagging. On the other hand, others opined that as non-financial information is mostly descriptive and un-quantified, it may not be suited for structured reporting.

A few respondents suggested developing KPIs (Key Performance Indicators) as a prerequisite to solve the issue of structuring documents that contain narrative material by nature.

The majority of respondents did not support extending electronic data structuring to all (including non-listed) companies' financial statements in the EU, even less so to management reports and other reporting, as this would be a non-proportionate measure leading to unnecessary standardisation and compliance costs.

Support for electronic signatures, electronic seals and/or other trust services



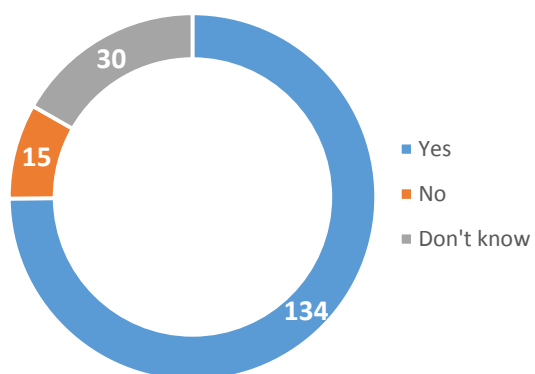
An overwhelming majority of respondents supported **electronic signatures, electronic seals and/or other trust services** as a way to ensure the integrity of the information and certainty of the source of the data used.

Standard setters supported the use of a single global unique identifier as well. There were some caveats expressed though in connection to costs as well as to the need to remain principles based in order to allow emerging technologies such as blockchain to play a role. Some respondents also warned that electronic seals should not add barriers to access or alter usability in a variety of

contexts, hence the suggestion by some to foster an open licensing policy as a way to overcome partly this concern.

⁸ XBRL stands for eXtensible Business Reporting Language, as developed by XBRL International, Inc. iXBRL stands for inline XBRL.

Should the EU foster the re-use of data and the “file only once” principle?



visibility of the OAMs (Officially Appointed Mechanisms), or to integrate the OAMs and the business registers at the Member State level.

Preparers had a strong desire to **encourage re-use of data**. However, many pointed to difficulties inherent in implementing “file only once” principles and data re-use at the EU level due to **strong ramifications with national laws or regulatory schemes**, as they may pursue different objectives. The EU could envisage implementing sophisticated IT solutions, one respondent said. Alternatively, a few respondents suggested that open licensing policies could cater for a “file only once” principle, by e.g. enabling any regulator, administration or user to have free access to the data at low cost. Other ways to achieve data re-use, some said, could be to strengthen the role and