

New Disclosure Requirements on Nonfinancial Information for Italian Public Interest Entities

IN SHORT

The Background: On December 30, 2016, the Italian government approved Legislative Decree No. 254/2016 implementing EC Directive 2014/95/EU on the disclosure of nonfinancial and diversity information by certain large undertakings and groups.

The Result: Under the new rules, starting with fiscal year 2017, public interest entities shall draw up a nonfinancial statement aimed at providing market players with information on certain social, employment, and environmental matters deemed relevant in light of the entity's nature and operations.

Looking Ahead: The new rules aim at providing investors and other stakeholders with a more comprehensive view of a company's performance.

Legislative Decree No. 254 ("Decree") was approved by the Italian government on December 30, 2016, and implemented the European Union framework on the disclosure of nonfinancial and diversity information by certain large undertakings and groups (Directive 2014/95/EU of the European Parliament and of the Council of October 22, 2014, amending Directive 2013/34/EU).

In particular, the Decree sets out the requirement for public interest entities to draw up an annual nonfinancial statement containing information regarding the entity's development, performance, position, and the impact of the entity's operations on environmental, social, employment, human right, anticorruption, and bribery matters.

Entities Subject to the New Requirements

Pursuant to Section 2 of the Decree and Section 16 of Legislative Decree No. 39/2010, the new disclosure requirements shall apply to public interest entities, which are defined as Italian companies meeting both of the following criteria:

- Categorized as one of the following: (i) issuers of securities traded on Italian or European regulated markets; (ii) banks; (iii) insurance companies; or (iv) reinsurance companies; and
- Exceeding, on an individual or consolidated basis, (i) 500 employees on average during the relevant fiscal year as well as (ii) at least one of the following thresholds: total net asset value of €20,000,000 or total net revenues from sales and services of €40,000,000 at the end of the relevant fiscal year.

Exemptions

Public interest entities and their subsidiaries are exempted from filing stand-alone nonfinancial statements if:

- They are required to draw up consolidated nonfinancial statements; or

“ ... the Decree sets out the requirement for public interest entities to draw up an annual nonfinancial statement ... ”

- They are included in the consolidated statement submitted by their parent company.

Nonfinancial Statement Content

The nonfinancial statement shall be drawn up on a consolidated basis if the parent company of a large group qualifies as a public interest entity or on a stand-alone basis for public interest entities not belonging to any such large group.

Either way, the nonfinancial statement shall contain, among other details, information about, at least, environmental, social, and employment matters, as well as human rights, anticorruption, and bribery issues relevant to the nature and operations of the entity. A description of the compliance program implemented pursuant to Italy's Legislative Decree No. 231/2001 (the so-called corporate criminal liability statute) should also be included alongside the relevant outcome and risk areas.

Nonfinancial Statement Drafting and Oversight

The management body of the public interest entity is responsible for drafting the nonfinancial statement, while the entity's supervisory board shall, in conjunction with the external auditors, oversee compliance with the relevant provisions of law and report to the general shareholders' meeting in their annual report.

Publication of the Nonfinancial Statement and Sanctions

The nonfinancial statement may be included in the directors' management report of the annual financial statements or may be filed with the Italian Companies' Register as a stand-alone report ancillary to the annual financial statements.

The public interest entity's directors, members of the supervisory board and auditors may be fined from €20,000 to €150,000 if the nonfinancial statement (i) is not filed, (ii) does not comply with the Decree's provisions, or (iii) provides untrue or incomplete information (unless the conduct is criminally relevant). The Italian securities market regulator, CONSOB, is responsible for investigating and sanctioning infringements.

Voluntary Nonfinancial Statement

Entities other than public interest entities which desire to provide information of nonfinancial nature on a voluntary basis may opt into the disclosure regime contemplated by the Decree and draw up nonfinancial statements. Those Small-Medium Enterprises which do opt in may qualify for a simplified procedure under the terms of the Decree.

Entry into Force

The new disclosure provisions of the Decree came into effect on January 25, 2017, and will apply beginning with the public interest entities' annual reports on fiscal year 2017.

FOUR KEY TAKEAWAYS

1. Legislative Decree No. 254/2016 requires that Italy's public interest entities meeting certain criteria publish an annual statement disclosing nonfinancial information.
2. The statement must include information about social and employment matters, as well as the human rights, anticorruption, and bribery issues relevant to the nature and operations of the entity.
3. Fines can be levied against an entity's directors, supervisory board members, and auditors for noncompliance or for providing false information.
4. CONSOB, the Italian securities market regulator, is responsible for investigating and sanctioning infringements.

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