



Mandatory Disclosure: Belgium Requires Large Companies to Provide Certain Non-Financial Information

IN SHORT

The Background: On September 3, 2017, Belgium adopted a law implementing EC Directive 2014/95/EU on the disclosure of non-financial and diversity information by certain large undertakings and groups.

The Result: Under the new rules, starting with financial year 2017, certain large Belgian undertakings must draw up a non-financial 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. In addition, large listed companies must set out their diversity policy.

Looking Ahead: The new rules are intended to provide investors and other stakeholders with a more comprehensive view of the performance of concerned companies, with the goal of strengthening responsible approaches to business conduct.

In the wake of the European Union's continued drive to increase corporate social and environmental responsibility, on September 3, 2017, Belgium adopted a law implementing the EU framework for the disclosure of non-financial and diversity information by certain large undertakings. The Belgian Law implements, with a nine-month delay, Directive 2014/95/EU of the European Parliament and of the Council of October 22, 2014, amending Directive 2013/34/EU. The Law was published in the Belgian Official State Gazette on September 11, 2017.

In particular, the Law amends Articles 96 and 119 of the Belgian Companies Code ("BCC") and sets out that certain large undertakings must draw up an annual non-financial statement containing information on the entity's development, performance and position, as well as the impact of the entity's operations on environmental, social, employment, human rights, anticorruption, and bribery matters. In addition, large listed companies also must annually prepare, as part of their corporate governance statement, a description of the diversity policy applied to directors and management (with regard to age, gender, education, and professional background) and its objectives.

The Law further requires companies controlled by public authorities or by a public legal entity annually to file a remuneration report with the National Bank of Belgium. This report must provide an overview of the remuneration and other advantages granted, on an individual basis, to the executive and non-executive directors of such companies and their subsidiaries.



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Entities Subject to the New Requirements

The non-financial disclosure requirements will apply to Belgian public interest entities, as defined by Article 4/1 BCC (i.e., companies whose securities (shares or bonds) are listed on a regulated market, credit

institutions, insurance or reinsurance undertakings and clearing institutions), that exceed (i) 500 employees on average during the relevant financial year, as well as (ii) on an individual basis (or, if the relevant company is a parent company, on a consolidated basis), at least one of the following thresholds: balance sheet total of €17 million or annual turnover of €34 million.

The specific disclosure requirements relating to diversity policy will apply only to large companies whose shares are listed on a regulated market—i.e., that do exceed, on an individual basis (or, if the relevant company is a parent company, on a consolidated basis), more than one of the following criteria: (i) 250 employees on average during the relevant financial year, (ii) balance sheet total of €17 million, and (iii) annual turnover of €34 million.

Exemptions

Public interest entities and their subsidiaries are exempted from filing stand-alone non-financial statements if these are already included in the parent company's consolidated statement.

In exceptional cases, the board of directors, which is responsible for drafting the non-financial statement, may decide to omit certain information from the non-financial statement where the publication of such information could seriously affect the group's commercial position.

Review by Statutory Auditor

The company's statutory auditor must state whether both the non-financial statement and information on the diversity policy are compliant with legal requirements and consistent with the annual accounts relating to the same financial year (Articles 144, §1, al. 1, 6° and 148, §1, al. 1, 5° BCC).

Publication of the Non-Financial Statement and Soft Law

The non-financial statement may be included in the management report of the annual financial statements or may be filed with the National Bank of Belgium as a stand-alone report ancillary to the annual financial statements. In such case, the annual financial statements must specify that the non-financial statement is presented in a separate report.

Because soft law governs the disclosure requirements for non-financial information, no specific penalty will apply in the case of infringement of the Law. Should a concerned entity not publish information with respect to one or more of the non-financial matters, the non-financial statement must include a clear and reasoned explanation of the elements justifying such noncompliance.

Entry into Force

The Law's new disclosure provisions come into effect for the financial year starting January 1, 2017 (or in the course of 2017).

THREE KEY TAKEAWAYS

1. The Law requires certain large Belgian undertakings to publish an annual statement disclosing non-financial information.
2. This 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. Large listed companies also must set out their diversity policy.
3. While noncompliance with such requirements is not sanctioned, it must be clearly and reasonably justified.

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