



# Climate change from a business perspective. The EU law perspective

POWER of Knowledge. Scientific Workshop Series |  
27 April 2022 | 19:30 h | via Zoom



N.B. Please note that whenever appropriate, screenshots are linked to the relevant website.

# JeanMonnet.mci.edu

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**Previous Chair:  
EU & Ethics.**

2016 to 2019



**New Chair:  
EU Values.**

2019 to 2022



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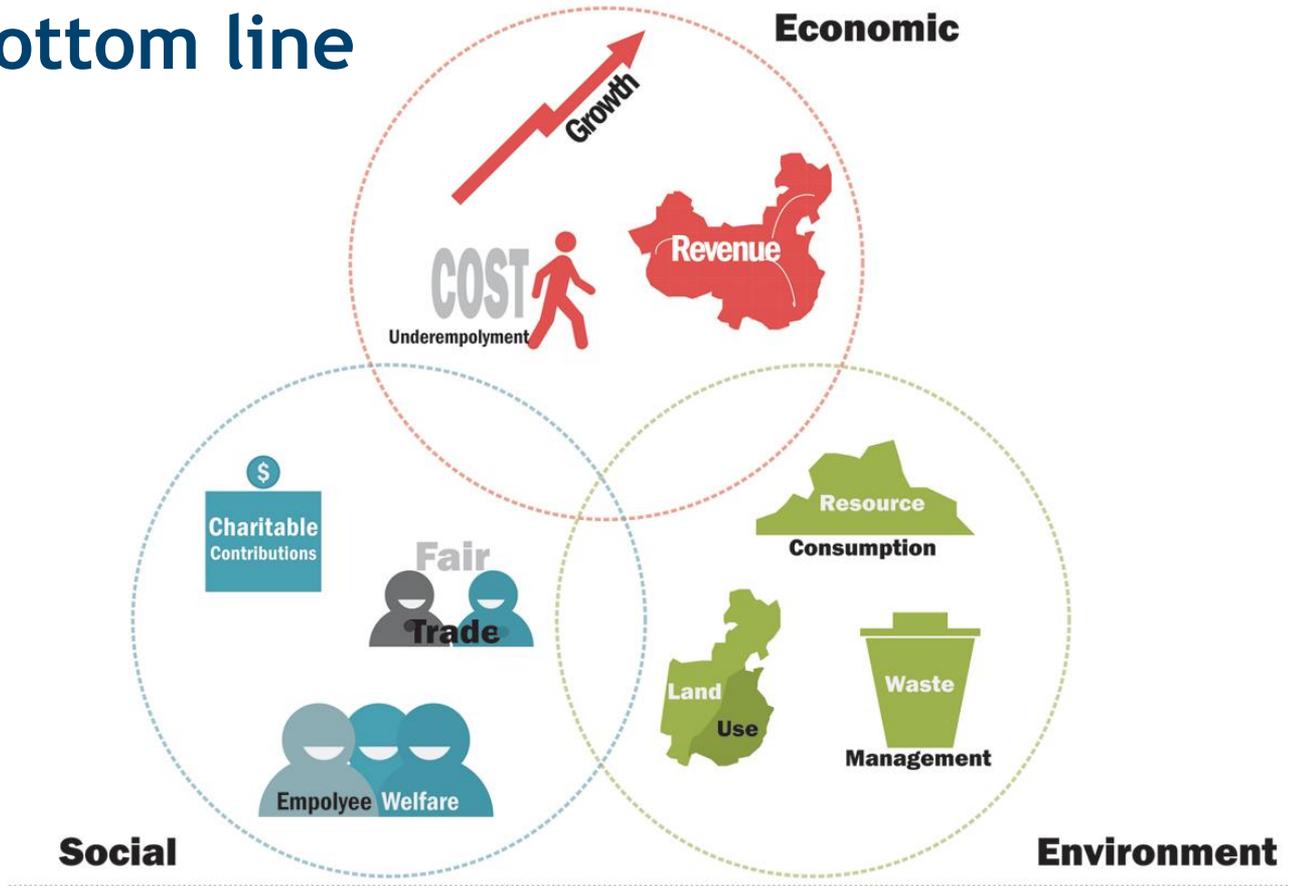
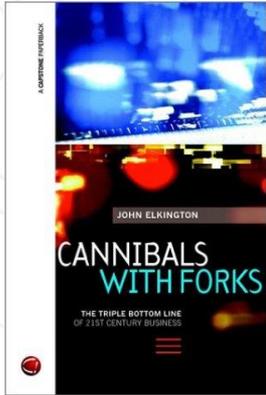
Cf. Frischhut, M. (2019). *The Ethical Spirit of EU Law*. Cham: [Springer International Publishing](https://www.springer.com).

# Kick-off question



Picture source: <http://www.bildung-fuer-deutschland.de/>

# Triple bottom line



Picture source: [https://en.wikipedia.org/wiki/Triple\\_bottom\\_line#/media/File:Triple\\_Bottom\\_Line\\_graphic.jpg](https://en.wikipedia.org/wiki/Triple_bottom_line#/media/File:Triple_Bottom_Line_graphic.jpg)

# Question



Picture source: <http://www.bildung-fuer-deutschland.de/>

# Genesis (excerpt)

**Directive 2013/34/EU** of the European Parliament and of the Council of 26 June 2013 **on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings**, amending Directive **2006/43/EC** of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, OJ 2013 L 182/19

**Directive 2014/95/EU** of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU **as regards disclosure of non-financial and diversity information by certain large undertakings and groups**, OJ 2014 L 330/1

EC **proposal for a Directive amending** Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting, COM(2021) 189 final 21 April 2021

European Council **Conclusions**, EUCO 10/1/11, 24/25 March 2011, p. 4  
*"The overall regulatory burden, in particular for **SMEs**, should be reduced at both European and national levels."*

European Commission **Communication**: A renewed EU strategy 2011-14 for **Corporate Social Responsibility**, COM (2011) 681 final 25 October 2011

European Commission **Staff Working Document**: Implementing the **UN Guiding Principles** on Business and Human Rights – State of Play, SWD(2015) 144 final 14 July 2015

Communication from the Commission — Guidelines on non-financial reporting (**methodology for reporting non-financial information**), OJ 2017 C 215/1

Communication from the Commission — Guidelines on non-financial reporting: Supplement on reporting **climate-related information**, OJ 2019 C 209/1

Implementation until 6 Dec. 2016

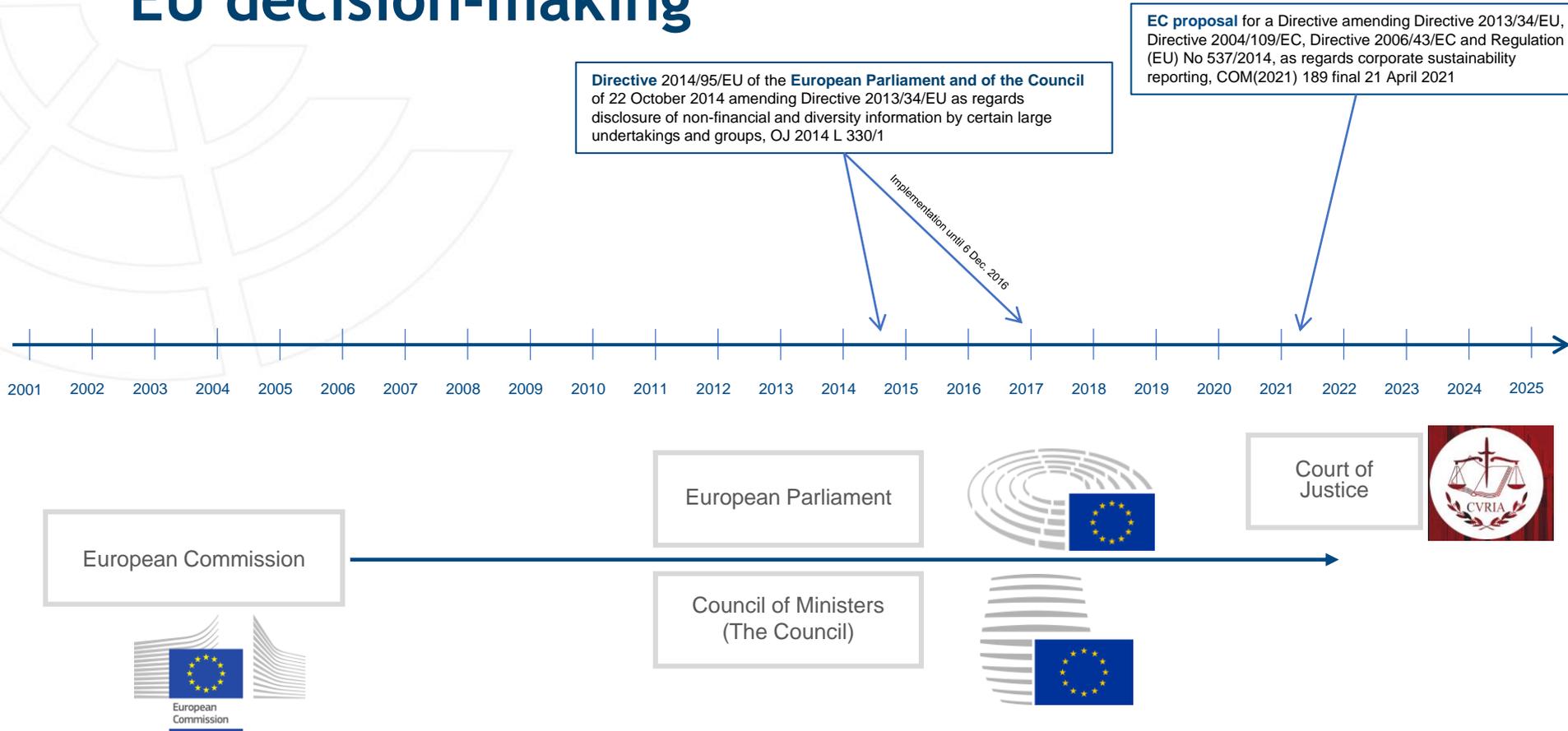


# Question



Picture source: <http://www.bildung-fuer-deutschland.de/>

# EU decision-making



Picture source: EU in slides

# Commission proposal



EUR-Lex

Access to European Union law

EC proposal for a Directive amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting, COM(2021) 189 final 21 April 2021

Text

Document information

Procedure

Internal procedure

Save to My items

Follow this procedure

Permanent link

Procedure 2021/0104/COD

COM (2021) 189: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting

Ongoing

[More information about this procedure](#) ▾

Type: **Ordinary legislative procedure (COD)**

[What is an Ordinary legislative procedure](#) ⓘ

European Commission

Council of the European Union

European Central Bank

Economic and Social Committee

2021

Follow the steps of procedure 2021/0104/COD

Reverse Order



⌵ Expand all / ⌵ Collapse all

# Question



Picture source: <http://www.bildung-fuer-deutschland.de/>

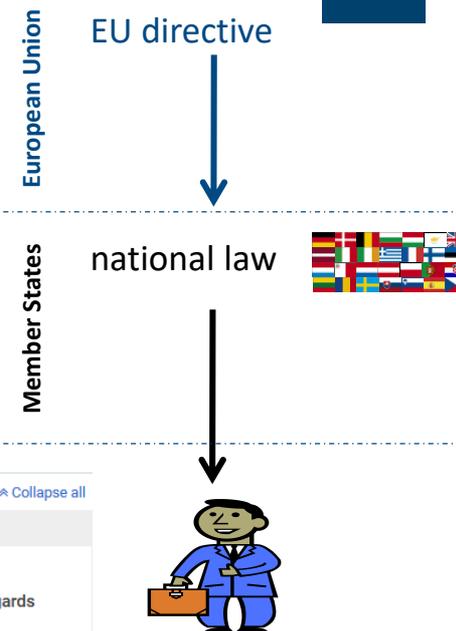
# EU directives



EUR-Lex

Access to European Union law

Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, OJ 2014 L 330/1



Text

Document information

Procedure

National transposition

Document summary

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Expand all Collapse all

## Title and reference

National transposition measures communicated by the Member States concerning:

Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups Text with EEA relevance

OJ L 330, 15.11.2014, p. 1–9 (BG, ES, CS, DA, DE, ET, EL, EN, FR, HR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV)

The member states bear sole responsibility for all information on this site provided by them on the transposition of EU law into national law. This does not, however, prejudice the results of the verification by the Commission of the completeness and correctness of the transposition of EU law into national law as formally notified to it by the member states. The collection National transposition measures is updated weekly.

## National transpositions by Member State

Collapse all / Expand all

Transposition deadline(s)

Number of measures

+ Belgium

06/12/2016

1

+ Bulgaria

06/12/2016

2

# EU directives | implementation



EUR-Lex

Access to European Union law

Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, OJ 2014 L 330/1

Text

Document information

Procedure

National transposition

Document summary

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Austria

06/12/2016

1

MACHINE TRANSLATION

Transposition deadline: 06/12/2016

1. Bundesgesetz, mit dem zur Verbesserung der Nachhaltigkeits- und Diversitätsberichterstattung das Unternehmensgesetzbuch, das Aktiengesetz und das GmbH-Gesetz geändert werden (Nachhaltigkeits- und Diversitätsverbesserungsgesetz, NaDiVeG)

Official publication: *Bundesgesetzblatt für die Republik Österreich (BGBl.)*; Number: I Nr. 20/2017; Publication date: 2017-01-17

Poland

06/12/2016

2

Portugal

06/12/2016

39

Romania

06/12/2016

5

# Question



Picture source: <http://www.bildung-fuer-deutschland.de/>

# Non-financial and diversity reporting

Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, OJ 2014 L 330/1

Implementation until 6 Dec. 2016



- Directive 2014/95/EU, applicable to some large companies, does **not** prescribe a **specific standard**.
- While mentioning some explicit **examples** (e.g., ISO 26000), in providing this information, recital 9 **allows** undertakings that they “may rely on national frameworks, Union-based frameworks [...], or international frameworks [...], or other recognised international frameworks.”
- According to these EU rules on non-financial reporting, the **common good matrix**, which lies at the heart of the **Common Good Balance Sheet**, is based on the ‘values’ of human dignity, solidarity and social justice, environmental sustainability, transparency and co-determination.

# Non-financial and diversity reporting

Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, OJ 2014 L 330/1

“The obligation to disclose **diversity** policies in relation to the administrative, management and supervisory bodies with regard to aspects such as, **for instance, age, gender or educational and professional backgrounds** should apply **only to certain large undertakings.**” (19<sup>th</sup> recital)

“non-financial statement containing information relating to at least **environmental** matters, **social and employee-related** matters, respect for **human rights, anti-corruption and bribery** matters” (6<sup>th</sup> recital)

# Non-financial and diversity reporting

Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, OJ 2014 L 330/1

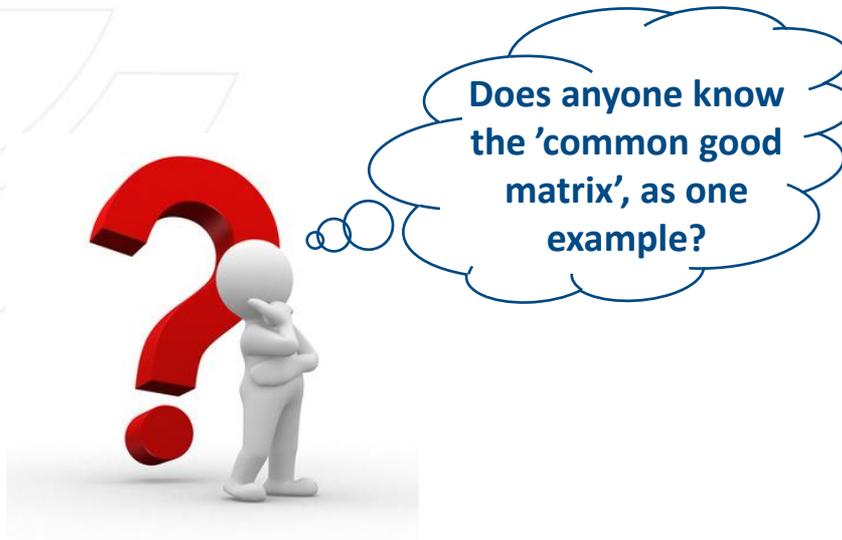
“as regards **environmental matters**, details of the current and foreseeable impacts of the undertaking's operations on the **environment**, and, as appropriate, on **health** and **safety**, the use of renewable and/or non-renewable **energy**, greenhouse gas **emissions**, **water use** and **air pollution**“ (7<sup>th</sup> recital)

“non-financial statement containing information relating to at least **environmental** matters, **social and employee-related** matters, respect for **human rights, anti-corruption and bribery** matters” (6<sup>th</sup> recital)

“As regards **social and employee-related** matters, the information provided in the statement may concern the actions taken to ensure **gender equality**, implementation of fundamental **conventions** of the **International Labour Organisation**, working conditions, **social dialogue**, respect for the **right of workers** to be informed and consulted, respect for **trade union** rights, **health and safety at work** and the **dialogue** with local communities, and/or the actions taken to ensure the protection and the development of those communities.“ (7<sup>th</sup> recital)

“With regard to **human rights, anti-corruption and bribery**, the non-financial statement could include information on the prevention of human rights abuses and/or on instruments in place to fight corruption and bribery.“ (7<sup>th</sup> recital)

# Question



Picture source: <http://www.bildung-fuer-deutschland.de/>

# Common good matrix

VALUE	HUMAN DIGNITY	SOLIDARITY AND SOCIAL JUSTICE	ENVIRONMENTAL SUSTAINABILITY	TRANSPARENCY AND CO-DETERMINATION
STAKEHOLDER				
<b>A: SUPPLIERS</b>	<b>A1</b> Human dignity in the supply chain	<b>A2</b> Solidarity and social justice in the supply chain	<b>A3</b> Environmental sustainability in the supply chain	<b>A4</b> Transparency and co-determination in the supply chain
<b>B: OWNERS, EQUITY- AND FINANCIAL SERVICE PROVIDERS</b>	<b>B1</b> Ethical position in relation to financial resources	<b>B2</b> Social position in relation to financial resources	<b>B3</b> Use of funds in relation to social and environmental impacts	<b>B4</b> Ownership and co-determination
<b>C: EMPLOYEES, INCLUDING CO-WORKING EMPLOYERS</b>	<b>C1</b> Human dignity in the workplace and working environment	<b>C2</b> Self-determined working arrangements	<b>C3</b> Environmentally-friendly behaviour of staff	<b>C4</b> Co-determination and transparency within the organisation
<b>D: CUSTOMERS AND OTHER COMPANIES</b>	<b>D1</b> Ethical customer relations	<b>D2</b> Cooperation and solidarity with other companies	<b>D3</b> Impact on the environment of the use and disposal of products and services	<b>D4</b> Customer participation and product transparency
<b>E: SOCIAL ENVIRONMENT</b>	<b>E1</b> Purpose of products and services and their effects on society	<b>E2</b> Contribution to the community	<b>E3</b> Reduction of environmental impact	<b>E4</b> Social co-determination and transparency

Source: <https://www.ecogood.org/apply-ecg/common-good-matrix/>

# Common good matrix

- In the **business** world, similar values should be honoured as in the **constitutions** of democratic states ‘constitutional values’.
- Hence, these values have been **identified** in a **bottom-up** approach, based on legal comparison.
- Strong similarities with **EU values**.
- The **content** of these values shall be **filled with life** by those affected via a democratic decision, hence, again **bottom-up**.
- This can be seen as an **ongoing** and **dynamic** process, also including future generations.
- While the EU Directive refers to “environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters”, this example of the Common Good Matrix stands out for its strong emphasis on **EU values** (human dignity, solidarity, justice) and related **principles** (sustainability, transparency) that are explicitly addressed.

STAKEHOLDER	VALUE	HUMAN DIGNITY	SOLIDARITY AND SOCIAL JUSTICE	ENVIRONMENTAL SUSTAINABILITY	TRANSPARENCY AND CO-DETERMINATION
<b>A: SUPPLIERS</b>		<b>A1</b> Human dignity in the supply chain	<b>A2</b> Solidarity and social justice in the supply chain	<b>A3</b> Environmental sustainability in the supply chain	<b>A4</b> Transparency and co-determination in the supply chain
<b>B: OWNERS, EQUITY, AND FINANCIAL SERVICE PROVIDERS</b>		<b>B1</b> Ethical position in relation to financial resources	<b>B2</b> Social position in relation to financial resources	<b>B3</b> Use of funds in relation to social and environmental impacts	<b>B4</b> Ownership and co-determination
<b>C: EMPLOYEES, INCLUDING CO-WORKING EMPLOYERS</b>		<b>C1</b> Human dignity in the workplace and working environment	<b>C2</b> Self-determined working arrangements	<b>C3</b> Environmentally-friendly behaviour of staff	<b>C4</b> Co-determination and transparency within the organisation
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Cf.: Felber, C., & Heindl, G. (2015). Verfassungen und Gemeinwohl: Werte, Ziele, Mittel und Erfolgsmessung in der Gemeinwohl-Ökonomie und was demokratische Verfassungen dazu sagen. In W. J. Pfeil & S. Urnik (Eds.), *Gesellschaftliche Verantwortung und Gemeinwohl als Unternehmensziele* (pp. 15–42). Manz . | Frischhut, M. (2022, forthcoming). *The Ethical Spirit of EU Values*. Cham: Springer International Publishing.

Source: <https://www.ecogood.org/apply-ecg/common-good-matrix/>



# EU values, principles & ethics (excerpt)

**Trust** (as an overarching goal)

*General field*

*Health field (additionally)*

more abstract

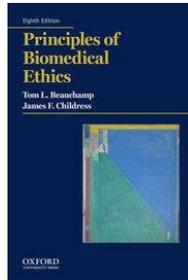
## Common values (Art 2 TEU):

- human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including minority rights
- pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men

## Health values (2006):

universality, access to good quality care, equity, and solidarity

more concrete



## principles of biomedical ethics':

- respect for autonomy
- nonmaleficence
- beneficence
- justice

## legal principles:

- non-discrimination
- privacy
- traceability
- transparency
- responsibility
- proportionality & balance
- precaution
- solidarity

Beauchamp, T. L., & Childress, J. F. (2019). *Principles of biomedical ethics* (Eighth edition). Oxford University Press.

## Operating principles (2006):

quality, safety, care that is based on evidence and ethics, patient involvement, redress, privacy and confidentiality

(other) law as minimum standard (e.g. above-mentioned EU Secondary Law)

Cf. Frischhut, M. (2020). EU Values and Ethical Principles for AI and Robotics with Special Consideration of the Health Sector. In M. Hengstschläger & Austrian Council for Research and Technology Development (Eds.), *Digital Transformation and Ethics* (pp. 244-274). Ecowin. | Frischhut, M. (2019). *The Ethical Spirit of EU Law*. Cham: [Springer International Publishing](https://www.springer.com).

# Question



Picture source: <http://www.bildung-fuer-deutschland.de/>

# Guidelines | general methodology

- “companies required to disclose **relevant, useful** information that is necessary to understand their development, performance, position and the impact of their activity, rather than an exhaustive, detailed report” (pt. 1)
- **Flexibility** to disclose relevant information in the way deemed **most useful**, including in a separate report; companies may rely on international, EU-based or national frameworks (pt. 1)
- 3.1. Disclose material information: **context** related; ‘to the extent **necessary for an understanding** of the [...] **impact** of (the company's) activity’; most likely similar in similar industry; to be regularly reviewed
- 3.2. Fair, balanced and understandable: fair consideration to **favourable and unfavourable** aspects, information to be presented in an **unbiased** way; clearly **distinguish facts from views** or interpretations; using **plain language** and consistent terminology, avoiding boilerplate, and, where necessary, providing definitions for technical terms
- 3.3. Comprehensive but concise: **1. environmental, etc.; 2. human rights; 3. anti-corruption, etc.**
- 3.4. Strategic and forward-looking: possibility to avoid commercially-sensitive information, but information provided can **still be useful** to investors and other stakeholders; forward-looking information **enables users** of information **to better assess** the resilience and sustainability of a company's development

Communication from the Commission — Guidelines on non-financial reporting (**methodology for reporting** non-financial information), OJ 2017 C 215/1

Communication from the Commission — Guidelines on non-financial reporting: Supplement on reporting climate-related information, OJ 2019 C 209/1

# Guidelines | general methodology

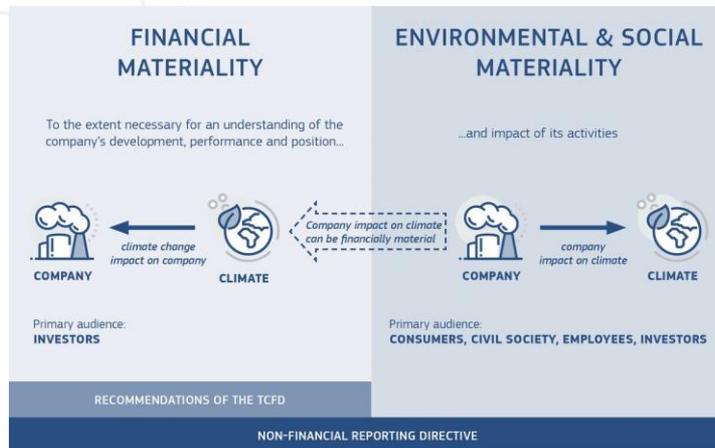
- 6. Board diversity disclosure:
  - While the disclosure requirements concerning **non-financial** information apply to **large** public-interest entities with more than 500 employees, the disclosure requirements concerning **board diversity apply only to large listed companies**.
  - **Specify which diversity criteria are applied** and explain the reasons for choosing them
  - **Covering** age, gender, or educational and professional backgrounds
  - Eventually also geographical provenance, international experience, expertise in relevant sustainability matters, employee representation and other aspects, for example socioeconomic background

Communication from the Commission — Guidelines on non-financial reporting (**methodology for reporting** non-financial information), OJ 2017 C 215/1

Communication from the Commission — Guidelines on non-financial reporting: Supplement on reporting climate-related information, OJ 2019 C 209/1

# Guidelines | climate related information

- **Supplement** to the Guidelines on Non-Financial Reporting adopted by the Commission in 2017
- Reference to what is now Regulation (EU) 2020/852 on the establishment of a framework (**taxonomy**) to facilitate sustainable investment
- Companies to ensure that climate-related reporting is **regularly updated** in line with **latest scientific evidence**.
- **Not** intention of guidelines to encourage **stand-alone** climate reporting, companies rather **encouraged to integrate** climate-related information with other financial & non-financial information as appropriate in reports
- **2.2. Materiality: Climate-related** information falling into the category of environmental matters; companies



\* Financial materiality is used here in the broad sense of affecting the value of the company, not just in the sense of affecting financial measures recognised in the financial statements.

should consider a **longer-term time horizon** than is traditionally the case for financial information; **whole supply chain** to be considered

Communication from the Commission — Guidelines on non-financial reporting (methodology for reporting non-financial information), OJ 2017 C 215/1

Communication from the Commission — Guidelines on non-financial reporting: Supplement on reporting **climate-related information**, OJ 2019 C 209/1

# Question



Picture source: <http://www.bildung-fuer-deutschland.de/>

# Genesis (excerpt)

EP resolution of 29 May 2018 on **sustainable finance** (2018/2007(INI))

Council conclusions of 5 December 2019 on the deepening of the **capital markets union**, 14815/19

EP resolution of 17 December 2020 on **sustainable corporate governance** (2020/2137(INI))

Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, OJ 2013 L 182/19

Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, OJ 2014 L 330/1

EC **proposal for a Directive amending** Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting, COM(2021) 189 final 21 April 2021

Implementing until 6 Dec. 2016



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European Commission Communication: A renewed EU strategy 2011-14 for Corporate Social Responsibility, COM (2011) 681 final 25 October 2011

European Commission Staff Working Document: Implementing the UN Guiding Principles on Business and Human Rights – State of Play, SWD(2015) 144 final 14 July 2015

Communication from the Commission — Guidelines on non-financial reporting (**methodology for reporting non-financial information**), OJ 2017 C 215/1

Communication from the Commission — Guidelines on non-financial reporting: Supplement on reporting **climate-related information**, OJ 2019 C 209/1

Guidelines "Have **not** sufficiently improved the **quality of information** companies disclose pursuant to the NFRD", COM(2021) 189 final, p. 1

# Current Commission proposal

- **Background:** Revision of NFRD part of **Green Deal** activities
- **Terminology:** ‘sustainability information’ in place of ‘non-financial information’ (recital 7)
- **Overview:** “This proposal consists of one **Directive** that would **amend four existing** pieces of legislation. In the first place, it would amend the **Accounting Directive**, revising some exiting provisions and adding certain new provisions about **sustainability reporting**. In addition, it would amend the **Audit Directive** and the **Audit Regulation**, to cover the audit of sustainability information. Finally, it would amend the **Transparency Directive** to **extend the scope** of the sustainability reporting requirements to companies with securities listed on regulated markets, and to clarify the supervisory regime for sustainability reporting by these companies.”
- **New elements** of this proposal:
  - to **extend the scope** of the reporting requirements to additional companies, including all large companies and listed companies (except listed micro-companies);
  - to require **assurance** of sustainability information;
  - to **specify** in more detail the **information that companies should report**, and require them to report in line with **mandatory EU sustainability reporting standards**;
  - to ensure that all information is published as **part of** companies’ **management reports**, and disclosed in a **digital, machine-readable format**.

EC **proposal for a Directive amending** Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting, COM(2021) 189 final 21 April 2021



# Current Commission proposal

- **Extension of scope:**

The proposed option would ensure that approximately **49 000 companies** report sustainability information (75% of the turnover of all limited liability companies), **compared to the current 11 600 companies** (47% of the turnover of all limited liability companies) that are within the scope of the NFRD.

- **Climate-related information:** users are interested in knowing about undertakings' physical and transition **risks**, and about their **resilience** to different climate scenarios; incl. level and scope of **greenhouse gas emissions** and removals attributed to the undertaking, including the extent to which the undertaking uses offsets; here, users need **reliable information** (recital 41); energy aspects - across supply chains - should be duly considered, in particular in relation to environmental matters (recital 42)
- **From voluntary (guidelines) to mandatory:** Available evidence indicates that two non-binding **guidelines** did **not have significant impact** on quality of non-financial reporting, as **voluntary** nature of guidelines means that undertakings are free to apply them or not; consequently, **need for mandatory common reporting standards** to ensure that information is **comparable** and that all relevant information is disclosed. Based on **double-materiality principle**, standards should **cover all information** that is material to users; idea: that sustainability information has status comparable to financial information (recital 32); to be elaborated by EC (recital 33; see also recitals 34ff)
- **Digitalisation:** information to be provided in in XHTML format (recital 48)



Picture source: [Link](#)

EC **proposal for a Directive amending** Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting, COM(2021) 189 final 21 April 2021





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<https://jeanmonnet.mci.edu>

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