

NEW DIRECTIVE ON NON-FINANCIAL REPORTING TRANSPARENCY RULES ON SOCIAL RESPONSIBILITY FOR PUBLIC INTEREST ENTITIES

Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large undertakings and groups entered into force on 5 December 2014 (the "NFR Directive"). It introduces new reporting duties in relation to corporate social responsibility of large companies and groups.

According to the Global Reporting Initiative, a leading organization in the sustainability field, the NFR Directive introduces measures that will strengthen the "transparency and accountability" of approximately 6,000 large companies in the EU. In the Czech Republic, the NFR Directive would apply to approximately 500 companies. The new provisions will affect some of the public interest entities, defined under the NFR Directive, i.e., listed companies, banks, insurance companies or companies which are of significant public relevance because of the nature of their business, size or corporate status. However, only the relevant companies having more than 500 employees and reaching either a balance sheet total of 20 million euros or a net turnover of 40 million euros will fall under the scope of the NFR Directive (the "**Public Interest Entities**" or "**PIEs**"). This means that small and medium-sized companies will not have the new reporting obligations.

The PIEs will be required to draw up an annual statement containing information on:

- **environmental matters;**
- **social and employee-related matters;**
- **respect for human rights;**
- **anti-corruption;** and
- **bribery.**

The statement should include the PIE's business model, and description of the policies and due diligence processes related to the matters described in the statement. It should also reflect the outcomes of such policies. As regards environmental matters, the statement should contain details of the current and foreseeable impacts of the PIE's operations on the environment, and, as appropriate, health and safety, the use of renewable and non-renewable energy, greenhouse gas emissions, water use and air pollution.

As regards social and employee-related matters, the information provided in the statement may concern the actions taken to ensure gender equality, 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 the actions taken to ensure the protection and the development of those communities. With regard to human rights, anti-

corruption and bribery, the non-financial statement could include information on the prevention of human rights abuses and on policies in place to fight corruption and bribery.

The manner disclosing such information is left to the discretion of PIEs. For that purpose, they may use recognized guidelines which set down basic principles and/or templates for non-financial reporting. These include, among others, GRI's Sustainability Reporting Guidelines, the UNGC Guide to Corporate Sustainability, UN Guiding Principles on Business and Human Rights, OECD Guidelines for Multinational Enterprises, and Guidelines for Social Responsibility ISO 26000. Moreover, the European Commission will issue its own non-binding guidelines on methodology for reporting non-financial information.

Reporting is mandatory, yet flexibility is given to PIEs by the "comply or explain" approach. This means that, if the PIE does not have in place appropriate policies for the relevant areas (or any of them), it should at least provide a clear and reasoned explanation for not doing so. The PIE will always have an obligation to identify and disclose principal risks, in relation to human rights, environmental and social impacts, as well as aspects related to bribery and diversity and their due diligence procedures for identifying, preventing and mitigating those risks.

The NFR Directive provides an "emergency exit" clause (a so called "safe harbour") for exceptional cases. Member States' laws implementing the NFR Directive may allow PIEs to withhold and not disclose information relating to impending developments or matters in the course of negotiation if such disclosure would be seriously prejudicial to the entity's commercial interests. PIEs' directors would have collective responsibility to ensure that such omission is not misleading.

The NFR Directive entered into force on 5 December 2014. Member states will have two years to implement the new provisions into national law. Consequently, the new national laws should be applicable from 1 January 2017, meaning that the first annual statements will be published in 2018 (financial year 2017-2018).

While there is enough time before the national implementation occurs, we believe that the Public Interest Entities should follow this new piece of regulation (whether welcomed or not) very closely. If they wish to have a head-start, they should begin to take steps which will ensure compliance with the NFR Directive without delay.

WOLF THEISS's dedicated COMPLIANCE group will be glad to use its extensive experience in a broad range of compliance matters to assist its clients in relation to the NFR Directive.

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If you would like to know more about the topics covered in this memorandum or our services in general, please get in touch with the contacts listed above, or with:

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