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By email: mark.jackson@bis.gsi.gov.uk

15 April 2016

Dear Sirs,

Re. BIS Consultation on the Non-Financial Reporting Directive – A call for views on effective reporting alongside proposals to implement EU requirements

The British Private Equity and Venture Capital Association (“BVCA”) is the industry body and public policy advocate for the private equity and venture capital industry in the UK. With a membership of over 600 firms, the BVCA represents the vast majority of all UK based private equity and venture capital firms, as well as their professional advisers. This submission has been prepared by the BVCA’s Legal & Technical Committee, which represents the interests of BVCA members in legal, accounting and technical matters relevant to the private equity and venture capital industry.

Our members have invested over £30 billion in nearly 3,900 UK-based companies over the last five years. Companies backed by private equity and venture capital (“portfolio companies”) in the UK employ around 490,000 people and almost 90% of UK investments in 2014 were directed at small and medium-sized businesses. As major investors in private companies, and some public companies, our members have an interest in reporting matters, the conduct and information presented by such companies, and the burdens placed on the management of such companies.

We welcome increased deregulation in narrative reporting, while maintaining the UK’s high standards in this area. Although the Directive is not applicable to private companies, it could be relevant to some of the largest portfolio companies backed by our members. As part of the Walker Guidelines for Disclosure and Transparency in Private Equity (“Walker Guidelines”), the largest portfolio companies with a significant UK presence report on a voluntary basis in line with the listed company requirements per the Strategic Report (Companies Act 2006) with a few exceptions. Transposition of the Directive into UK law will therefore be considered when reviewing the content of the Walker Guidelines.

Given the likely number of responses to the Consultation, we have limited our responses to those questions that we believe are of particular relevance to our members.



Location of information

Q1. Flexibility on where to provide the non-financial statement: What is your view on permitting companies flexibility to place information where they feel most appropriate within the boundaries laid out by the EU NFR Directive? Please explain your reasons.

The BVCA acknowledges the increased flexibility of this option, potentially reducing cost and time pressure in producing both the financial and non-financial statements. However this moves away from an integrated reporting approach, an approach which we believe benefits investors and other stakeholders. The Directive itself promotes referring to and explaining amounts reported in the annual financial statements. This would be difficult, particularly for the second option where the report is expected to be published at a different date to the financial statements.

Consistency between the two reports could be reduced as the content of the report produced second would include information that may not have been known when the first report was published. Per the original Directive, assurance providers are required to express an opinion on whether the management report is consistent with the financial statements for the same financial year. As above, separate reports with different dates could pose difficulty for assurance providers in complying with this requirement and therefore in turn increase costs for companies (and this is in addition to the further potential issues that may arise if assurance providers are required to validate the non-financial statements as may be implemented per this consultation).

The second separate report option per the Directive requires the separate report to be made publically available within 6 months. This in itself is reasonable for the report to be useful for investors and other stakeholders. However listed company annual financial statements are required to be produced within 6 months so the deadlines for both reports are the same. As such there would be limited flexibility in reality, and so in our opinion it would be reasonable to require the reports to be published at the same time, allowing companies flexibility to choose whether to combine them or to have separate documents.

Q2. Information that could be placed in a Separate Report: We would welcome suggestions for information, currently required by law that could be placed in the separate report.

There are a number of new requirements which are likely to impact companies within scope, including the requirement under section 54 of the Modern Slavery Act to include a statement around transparency relating to human trafficking and forced labour within the supply chain, and the disclosures relating to gender pay gap reporting. Consideration should be given to allowing companies to combine all these requirements in the one place, with an appropriate linkage to the report on their website.

Scope

Q4. Advantages and disadvantages: What do you see as the advantages and disadvantages of the various implementation options?

Option 1

The main advantage of option 1 is that it would be cheaper for smaller companies (those with less than 500 employees) as they would not be required to comply with the new reporting requirements per the Directive.

We agree however that two reporting regimes working in parallel would be complicated and could be burdensome and costly for companies. In particular companies on the boundary of the 500 employee threshold would need to reassess annually whether they fall in or outside the threshold to determine their non-financial reporting obligations. Additionally, comparability for investors will be reduced.

We also seek clarification on whether and how employee numbers will be monitored to ensure listed PIEs which are on the 500 employees boundary are complying with the Directive.

Option 2

We welcome deregulation and this option reduces burden and cost in aggregate. This option would also be relatively straightforward compared to option 1.

However if a significant number of quoted companies removed disclosures in their reports, this could be considered a step backwards with the UK currently viewed as a leader in non-financial reporting. Furthermore some of these disclosures are very topical – such as those on diversity and human rights – so in practice companies may continue to include this information anyway.

Q5. Preferred option relating to scope: Considering the possible advantages and disadvantages provided by the flexibilities contained within the EU NFR Directive, which would be your preferred option in terms of which companies should be required to disclose non-financial information?

We do not have a preference out of the two options presented, but would urge the Government to implement the Directive in a manner that is simple to follow and encourages consistency in application by companies across subsequent reporting years.

Q6. Alternative Options: Are there any other options for implementing the EU NFR Directive the Government should consider?

One alternative option could be to amend the Companies Act so that all listed companies which apply the enhanced reporting disclosures per the Strategic Report are required to comply with the requirements per the Directive. Additionally other companies that fall within the definition of a PIE would be brought into scope.

In aggregate this could increase the compliance burden and cost for companies. However it is not a substantial change from the current reporting requirements Overall this is less complicated for companies to apply, especially when assessing whether the threshold of 500 employees has been breached, and the cost of dealing with the complexity and ambiguity inherent in a dual approach

should not be ignored. Additionally this option increases comparability between the annual reports of different companies in the UK and continues the trend of increased integrated narrative reporting which is beneficial for users of the financial statements. Again we would question whether in practice companies would remove disclosures on topical areas such as diversity and human rights.

Validation of non-financial information

Q7. Assurance of Non-Financial Information: Should the Government require that the non-financial statement be verified by an independent assurance service provider’?

No. In particular we are concerned by the increased burden placed on companies to obtain verification as discussed below.

Q8. Advantages and Disadvantages of third-party validation: What do you see as the advantages and disadvantages of requesting third party assurance?

The main advantage of third-party validation would result in increased assurance for users of the Annual Report in relation to narrative reporting around key areas such as the company’s principal risks. This will allow the users of financial statements to place greater reliance on the non-financial reports and make more informed decisions.

However third-party validation would substantially increase costs for companies in order to obtain such assurance. Third-party validation would be in addition to the audit of the financial statements and at similar times, placing greater stress on resources for companies.

Q9. Other Options: Are there any other options the Government should consider for Third Party Verification?

One option for the Government could be to support voluntary third party assurance, as some listed companies have obtained for their Greenhouse Gas Emissions reporting. This allows companies to have the flexibility to determine whether third party verification would be valuable for its users and possibly direct assurance providers to focus on only certain aspects of the narrative reporting which are intrinsically a greater risk for the company.

Gender Reporting

Q13. Definition of Senior Manager: BIS would welcome suggestions as to how this definition may be improved to reflect better the intention of this requirement.

We agree that the definition of Senior Manager in Companies Act has proved challenging to comply with as it is not necessarily appropriate for all companies. We support improvement to the definition to allow meaningful disclosure of gender reporting. The BVCA would suggest a flexible approach allowing companies to determine how to define what a Senior Manager is and include this definition alongside the disclosures. We do not believe this would reduce comparability between companies as this approach would be reflective of the internal structure of a company and so be more useful for the users of financial statements.



Reporting Regulations

Q16. Other Information: Is there any information that could be moved outside the Annual Report?

We support the reduction of excessive information, especially static information, from Annual Reports. We would suggest such information is moved to a location on the company's website as a freestanding statement that is easily accessible and can be updated when required.

The BVCA also seeks greater clarity with regards to the wording of paragraph 50 of the consultation, in relation to option 1 to prepare a separate report. The first option for a separate report offered by the Directive is where it is "published *together with* the management report." Paragraph 50 of the consultation interprets this as "within the Strategic Report." BIS should confirm that "together with" does not necessarily mean a report separate to the Strategic Report.

We also raise concern regarding certain items to be included in the discussion of the diversity policy as part of the Corporate Governance Statement. In particular we envisage difficulty with obtaining professional and educational backgrounds of employees and presenting this in a consistent and understandable manner, which is comparable across companies.

The BVCA would of course be willing to discuss this submission with you further and, if you so wish, please feel free to contact me.

Yours faithfully

A handwritten signature in black ink that reads 'GK Manku'.

Gurpreet Manku
BVCA, Director of Technical & Regulatory Affairs