Summary Report of the Targeted Consultation on the Update of the Non-Binding Guidelines on Non-Financial Reporting (20 February – 20 March 2019)

This document provides a factual overview of the contributions to the targeted consultation on the Update of the Non-Binding Guidelines on Non-Financial Reporting that took place from 20 February to 20 March 2019. The content of this document should not be regarded as an official statement of the position of the European Commission on the matters covered. It does not prejudge any feedback received in the context of other consultation activities.

1. Introduction

The Non-Financial Reporting Directive (2014/95/EU) requires large public interest entities with over 500 employees (listed companies, banks, and insurance companies) to disclose certain non-financial information.[1] As required by the Directive, the Commission has published Non-Binding Guidelines to help companies disclose relevant non-financial information in a more consistent and more comparable manner.[2]

In March 2018 the Commission published the Action Plan on Financing Sustainable Growth, with the aim of reorienting capital towards sustainable investment, managing financial risks that arise from climate change and other environmental and social problems, and fostering transparency and long-termism in financial and economic activity.[3]

As part of that Action Plan the Commission committed to update the Non-Binding Guidelines on Non-Financial Reporting, specifically with regard to the reporting of climate-related information. In practice, it is expected that the update will consist of a new supplement to the existing guidelines. The Commission intends to publish the new supplement on the reporting of climate-related information in June 2019.

In June 2018, the European Commission set up a Technical Expert Group on Sustainable Finance (TEG)[4] to assist in four key areas of the Action Plan through the development of: 1) a unified classification system for sustainable economic activities (taxonomy), 2) an EU green bond standard, 3) benchmarks for low-carbon investment strategies, and 4) recommendations on climate-related disclosures.

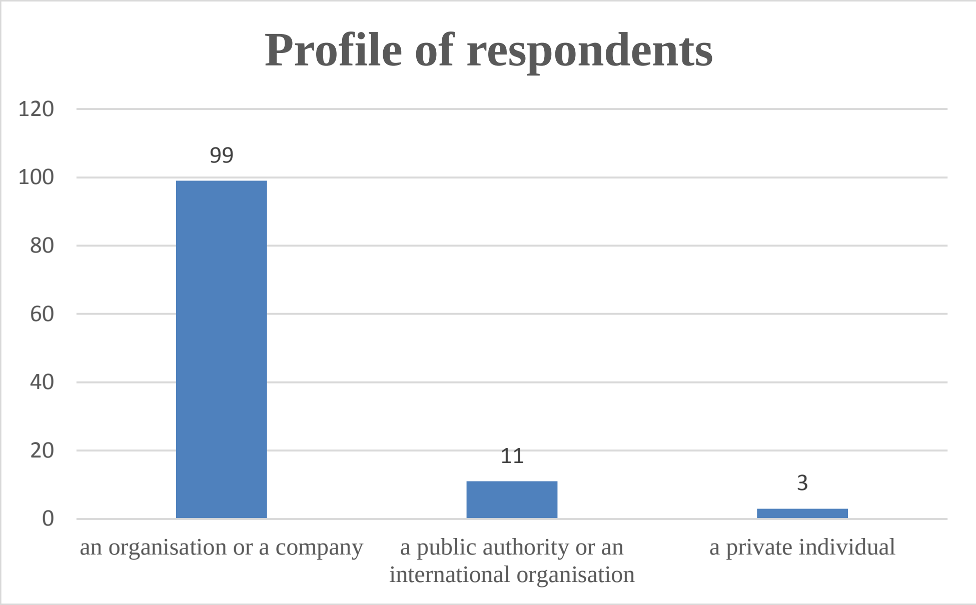
In January 2019 the TEG published its report on climate-related reporting. The TEG invited feedback on its report by 1 February 2019, and approximately 70 organisations and individuals submitted comments. The TEG has published a summary of these comments.[5]

Taking account of the TEG report and of stakeholder feedback on that report, the services of the European Commission published a consultation document for targeted online consultation with interested stakeholders from 20 February to 20 March 2019. This document summarises the principal comments submitted by stakeholders in response to that consultation.

[1] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095
[2] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017XC0705(01)
[3] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0097
[4] https://ec.europa.eu/info/publications/sustainable-finance-technical-expert-group_en
[5] The TEG report on climate-related disclosures and the summary of feedback from stakeholders are available here https://ec.europa.eu/info/publications/190110-sustainable-finance-teg-report-climate-related-disclosures_en

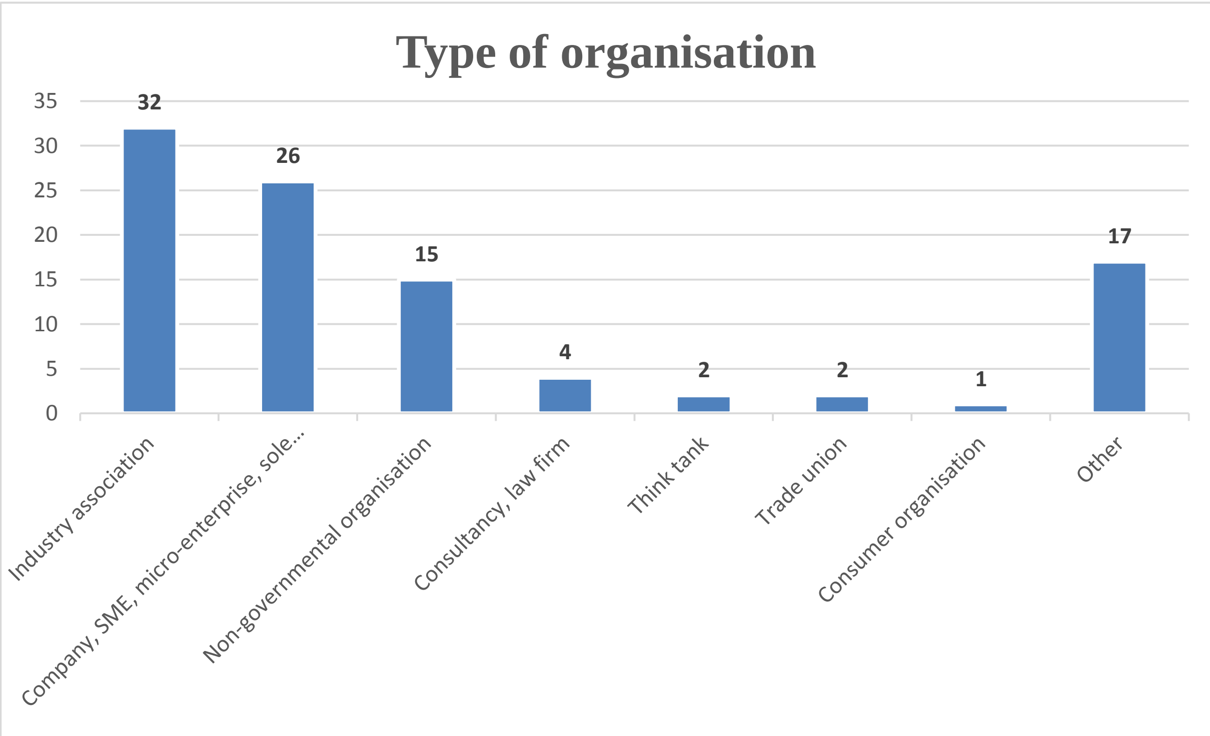
2. Profile of respondents

113 responses to the consultation were received.



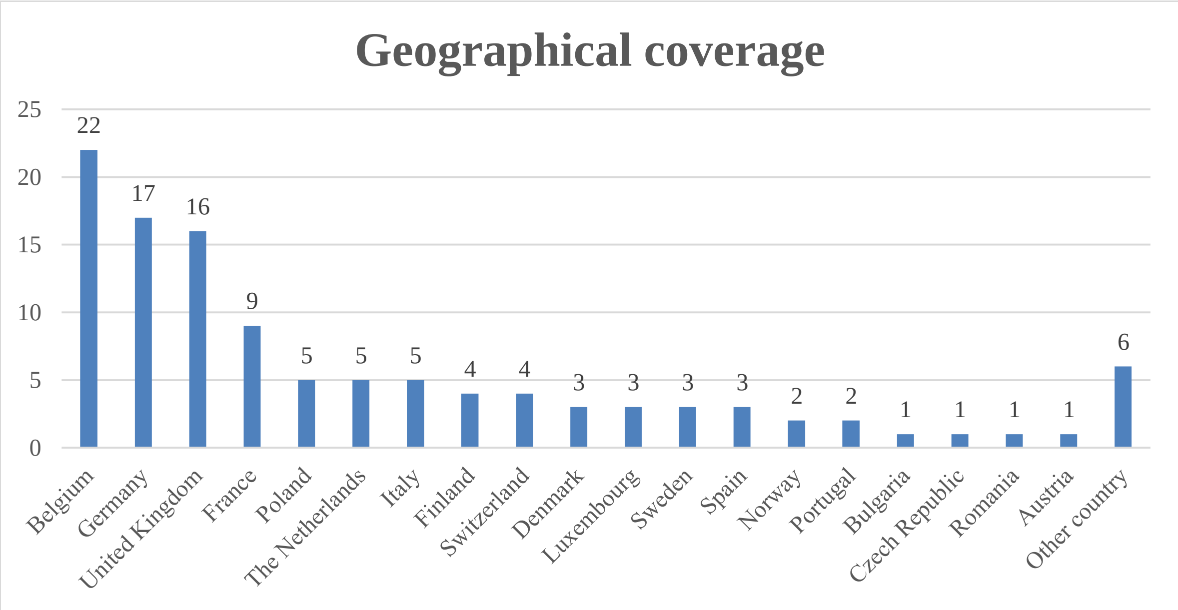
2.1 Type of organisation

The breakdown of respondents by type of organisation was as follows:



2.2 Geographical coverage

The breakdown of respondents according to where they are located was as flows:



3. Summary of comments received

The consultation was qualitative not quantitative. It invited respondents to provide written comments on each section of the document, and it did not prescribe the format of those comments.

In most cases the consultation revealed a difference of opinion between on the one hand report preparers and on the other hand supervisory and enforcement authorities and users of reported information. In general, preparers argued for fewer recommended disclosures, while non-governmental organisations and supervisory and enforcement authorities supported most of the proposals contained in the consultation document and in some cases suggested that they be strengthened in various ways. Investors and financial sector companies were generally supportive of the proposed disclosures as far as investee companies were concerned, but also argued that they themselves would find it difficult to meet the expectations expressed in the consultation document until disclosure by investee companies improved.

3.1 Comments on section 2 “How to use these guidelines”

Many respondents welcomed the explanation of the double materiality perspective of the Non-Financial Reporting Directive with regard to climate-related information. Other respondents questioned certain aspects of this explanation, for example the use of the terms “financial materiality” and “environmental and social materiality”.

Some respondents said that the overall volume of level of detail of the proposed disclosures would be too burdensome for many companies. Many of the same respondents referred to the need for proportionality and believed that there was a risk of reports and disclosures becoming too long.

Some respondents argued that in their view certain proposed disclosures go beyond the requirements of the Non-Financial Reporting Directive.

In the view of some respondents, some of the language used in the document should be made softer and more nuanced in order to be more consistent with the fact that the guidelines will be non-binding.

Some respondents welcomed the flexible approach proposed in the document, while other respondents argued that the document was not flexible enough.

The consultation document included a suggestion that companies which do not find climate change to be a material issue for their business should consider making a statement to that effect and explain how that conclusion as been reached. Some respondents argued that this suggestion should be deleted.

Some respondents said that some of the proposed disclosures could present problems for companies in terms of business confidentiality and competitive disadvantage vis-à-vis competitors not disclosing the same information.

Some respondents welcomed the proposed distinction between Type 1 disclosures (disclosures that a company should consider if climate-related information is necessary for an understanding of its development, performance, position and impact of its activities) and Type 2 disclosures (additional disclosures that companies may consider in order to provide more enhanced information). Other respondents said that the distinction between these two categories was not sufficiently clear and companies would have difficulty in knowing when and whether they should use Type 1 and Type 2 disclosures.

Some respondents called for more guidance on where the proposed disclosures should be published, especially whether and to what extent they should be integrated into the annual report.

3.2 Comments on section on "Business model"

Some respondents welcomed the proposed business model disclosures, and there were a number of suggestions to move some of the Type 2 disclosures to Type 1. Some respondents argued that the number of proposed disclosures was too high, and recalled that the NFRD requires a "brief" description of the business model. A number of these respondents proposed that some disclosures should be moved from Type 1 to Type 2, or deleted entirely.

There were a large number of comments about the proposed disclosures on resilience to different climate-change scenarios. Some respondents stressed the importance of this disclosure while others argued that it was very challenging for companies. There were several calls for further guidance on scenarios. Some respondents suggested that the proposed disclosures on scenarios should be moved to the section on risks.

Other comments regarding this suggestion included the need to avoid proposing disclosures that are insufficiently precise and clear. There was also support for the proposed disclosures regarding natural, social and human capitals, as well as concern about the difficulty of the disclosure on human and social capital in particular.

3.3 Comments in section on "Policies and due diligence processes"

A number of respondents suggested that the overall number of disclosures on policies and due diligence was too high and that some should be deleted or moved from Type 1 to Type 2. Other respondents proposed that some of the Type 2 disclosures should be moved to Type 1.

There were a significant number of comments on the proposed disclosures regarding targets. Some respondents said that the disclosures on targets should be strengthened in various way, for example by specifying targets over the short, medium and long-term, or by indicating that companies should explain how their targets align with the Paris Agreement. Other respondents argued that the proposed disclosures should not refer to alignment with national or international targets. Some respondents opposed the proposed disclosures on targets because the NFRD does not explicitly refer to targets.

Some respondents said that the guidelines should not assume that companies will have or should have a stand-alone policy on climate, and should allow for the fact that company policies on climate may be integrated into other policies.

There were a number of comments regarding the proposed disclosures on the climate competency of company boards and management, and on the links between remuneration and climate performance. Some respondents welcomed these disclosures and some proposed that they should be strengthened, for example by adding proposed indicators on board and management competency. Other respondents argued that these disclosures were excessive and/or would not lead to companies disclosing meaningful information.

3.4 Comments on section on "Outcomes"

Some respondents argued that the proposed disclosure on performance against a GHG emissions target was not necessarily relevant for all companies. Others recommended that this disclosure should be based on science-based targets and that companies should explain how their performance against a GHG emissions target aligns with the Paris Agreement.

Some respondents highlighted the importance of the proposed disclosure on how climate performance influences financial performance. Other respondents stated that this disclosure was not sufficiently clear, while others proposed that it should be deleted.

Some respondents commented on a potential overlap between this section and the section on KPIs, and called for the links between the two sections to be more explicit.

Other suggestions regarding this section included: ensuring balance between the disclosure of positive and negative outcomes; and providing additional guidance for companies on boundary-setting.

3.5 Comments on section on "Principal risks and their management"

There were a significant number of comments about the need to be consistent with the term "principal" risks as used in the Non-Financial Reporting Directive.

Some respondents argued that the risk-related disclosures were too numerous and too challenging for companies. There were many comments about individual proposed disclosures. In the great majority of cases, some respondents argued that a proposed disclosure was unnecessary or should be deleted, while other respondents argued that the same proposed disclosure should be strengthened in some way or, where relevant, moved from Type 2 to Type 1.

Some respondents said that the guidelines should allow for qualitative disclosures, since it would not always be possible for companies to make the proposed disclosures in quantitative terms.

There were various requests for further guidance on particular issues, for example on the particular risks per country or per sector, and on how to consider risks over different time horizons, and on how to present and format risk-related disclosures.

3.6 Comments on section on "Key Performance Indicators"

Some respondents considered the KPIs and their relationship to policies, reporting frameworks and measurement to be clear. Many respondents found the suggested KPIs were too numerous and detailed, risking losing focus on the most material issues and turning reporting into a tick the box exercise. Some suggested concrete changes from type 1 to type 2 disclosures. Nevertheless, some of the same respondents recognised that standardised KPIs could be useful to help companies report in a consistent way.

There were a number of comments regarding the need for comparability across sectors, but at the same time noting that not all KPIs are relevant to all sectors or companies.

There were respondents who asked for a further explanation of the term KPI and others who suggested concrete definitions. Some respondents criticised the use of the term KPI, as they understand that some of the indicators proposed in the guidelines might not be derived from the internal management process of the company or do not necessarily measure a company's achievement of their business objectives. Others argued that only indicators "relevant to the particular business" should be disclosed and that providing a list of KPIs would not be in accordance with the Directive requirements. Some respondents suggested a clear distinction between KPIs and the use of indicators to support other climate related disclosures, for example to illustrate the outcome of the policies.

Some respondents did not understand the character of some of the content under further guidance provided in the tables.

Some respondents found that the disclosure of which methodology has been used to calculate GHG emissions is not strong enough and that there is a need to require the use of a standardised methodology. Suggestions regarding methodologies included the need of a clearer reference in the text to the GHG protocol and to ISO 14064-1:2018 as the only possible standards. For consistency, it was also suggested to include a reference to ISO 14064-1:2018 under further guidance for reporting Scope GHG 3 emissions.

The reference to natural capital KPIs was welcomed. There were various requests for further guidance on social and human capital KPIs, on the allocation of GHG emissions per Scope for a given sector, and on Scope 3 GHG emissions reporting.

A number of respondents questioned the added value of some of the KPIs, and others proposed a number of additional KPIs, for example regarding land use, impacts on forest-dependent communities, avoided emissions, and efficiency.

Despite the recognition of the difficulties in reporting Scope 3 GHG emissions, some respondents welcomed this KPI. Others argued that Scope 3 GHG emissions reporting should be optional, given that they are not relevant in the same way for all sectors and that its measurability can be different and more or less burdensome depending on the reporting maturity of the company. Some respondents opposed the idea of disclosing targets on Scope 3 GHG emissions.

There were suggestions to make both absolute and intensity GHG emission targets compulsory for the sake of comparability and it was criticised that such KPI would be more or less relevant depending on the sector of the company.

There was a considerable number of comments regarding the KPIs on products and services which provide a link with the proposed taxonomy on sustainable economic activities. Some respondents welcomed the link with the taxonomy and even suggested that all KPIs should be linked to the taxonomy. Some respondents were critical of these proposed KPIs, which they believed would be difficult to implement and would be premature so long as the taxonomy has not been agreed. Some respondents suggested to move it from type 1 to type 2.

Regarding the KPIs on green finance, some different terminology was suggested instead of the proposed terms, and several respondents did not find the KPI useful for different reasons.

3.7 Comments on Annex 1 "Proposed disclosures for banks and insurance companies"

Some respondents welcomed the sector specific guidance for banks and insurance companies contained in Annex I. Other respondents questioned the need for a separate Annex for these entities, arguing that it was not appropriate or necessary to emphasise the financial sector compared to other sectors, given that the Directive does not impose different or additional requirements on these entities.

Some respondents found the number and level of detail of the proposed disclosures in Annex II to be excessive. Some respondents argued for a more flexible approach for smaller banks.

Some respondents argued that it would be difficult to use all the recommended disclosures because of a lack of adequate data from investee companies. In this context, it was suggested that the guidelines for banks and insurance companies were premature and that non-financial sector companies should be subject to stronger sustainability disclosure requirements. The lack of adequate data from investee companies was presented as a particular problem for those banks whose main clients are SMEs.

Some respondents stressed the need for consistency and coherence of the proposed guidelines with other existing and forthcoming legislation and guidance on sustainability reporting in the financial sector.

Many respondents argued that the status of the proposed disclosures in Annex II was not clear, since they were not divided into the Type 1 and Type 2 categories used in the rest of the document. Additionally some respondents stated it was unclear whether or not financial sector companies should follow the guidance of Annex II alone, or whether they would also be expected to use the other proposed disclosures contained in the document.

Some respondents felt that it was inconsistent to include guidance in relation to the asset management activities of banks and insurance companies but not to include asset managers as such in the scope of the guidelines.

There were various comments on particular recommended disclosures. Some respondents proposed that certain disclosures should be better explained, modified or deleted. Some respondents proposed additional disclosures to be added. There were also requests for more detailed guidance for financial sector companies on issues referred to in some of the proposed disclosures. Some respondents believed there was a risk that certain proposed KPIs would discourage financial sector companies from investing in companies and industries that need to transition to a low carbon model.

3.8 Comments on Annex II “Mapping of NFRD requirements and TCFD recommended disclosures

Some respondents welcomed the mapping and said that they found it useful. Other respondents argued that Annex II did not reflect the complexity of the relationship between the NFRD and the TCFD, and did not represent the full range of possible interactions between the two.