CONSULTATION DOCUMENT

REVIEW OF THE NON-FINANCIAL REPORTING DIRECTIVE BY THE EUROPEAN COMMISSION

11/06/2020

The Non-financial Reporting Directive (2014/95/EU) requires companies with more than 500 employees to disclose the non-financial risks and opportunities that they consider material for their business model. Within the context of the European Green Deal aiming to make the European economy competitive and more sustainable, the European Commission has announced a review of this directive.

In its consultation document, the European Commission notes that there are many shortcomings in the disclosure of non-financial information by European companies: the information is not sufficiently reliable or comparable, some material information is not disclosed, and the relevant information is not always easy to find. In order to provide information that meets the expectations of investors, clients and suppliers, of the companies, but also of non-governmental organisations and civil society, a review of the Non-financial Reporting Directive therefore appears necessary.

The answers provided by the French Financial Market Authority to the European Commission are developped below.

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Consultation answers

1. QUALITY AND SCOPE OF NON-FINANCIAL INFORMATION TO BE DISCLOSED

The feedback received from the online public consultation on corporate reporting carried out in 2018 suggests that there are some significant problems regarding the non-financial information currently disclosed by companies pursuant to Directive 2014/95/EU ("the Non-Financial Reporting Directive" or NFRD). Likewise, ESMA's 2018 Activity Report gathers evidence that shows there is significant room for improvement in the disclosure practices under the NFRD.

Question 1.: To what extent do you agree or disagree with the following statements about possible problems with regard to non-financial reporting?

	1	2	3	4	5	Don't Know
The lack of comparability of non-financial information reported by companies pursuant to the NFRD is a significant problem.				**X**		
The limited reliability of non-financial information reported by companies pursuant to the NFRD is a significant problem.					**X**	
Companies reporting pursuant to the NFRD do not disclose all relevant non-financial information needed by different user groups.			**X**			

(1= mostly disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree)

Article 19a of the Accounting Directive (which was introduced into the Accounting Directive by the NFRD) currently requires companies to disclose information about four non-financial matters, if deemed material by the particular company: (i) environment, (ii) social and employee issues, (iii) human rights, (iv) bribery and corruption. These correspond to the "sustainability factors" defined in Article 2(24) of Regulation (UE) 2019/2088 on sustainability-related disclosures in the financial services sector.

Question 2.: Do you consider that companies reporting pursuant to the NFRD should be required to disclose information about other non-financial matters in addition to those currently set-out in Article 19a? Please specify (no more than three matters).

Proposition de réponse AMF :

First, the AMF is in favour of requiring companies to disclose information about **sustainability governance** to better understand how environmental and social issues are considered at the highest level of the company's strategy (see Q3).

Secondly, the AMF believes that companies should disclose information about '**business ethics'** in their non-financial statement, i.e. information about tax, customer relations, corruption and supply chain management.

To that end, the non-financial matters on which companies should report **should be reshaped as follows**: 1) environmental matters, 2) social matters, 3) **business ethics, and 4) sustainability governance.**
In order to better guide companies and to improve consistency with European regulations such as the Taxonomy and the Disclosure regulation, the AMF is of the view that the themes covered by **each above-mentioned**

category should be further detailed in the L1 text:

a. Environmental matters should cover (1) climate change mitigation; (2) climate change adaptation; (3) sustainable use and protection of water and marine resources; (4) transition to a circular economy, waste prevention and recycling; (5) pollution prevention and control; (6) protection of healthy ecosystems – in line with the environmental objectives of the European taxonomy,
b. Social matters should cover (1) fundamental human rights (application of ILO Conventions for example) and (2) employees matters (health and safety at work, trade union relationships, human capital management as well as diversity),
c. Matters related to the business ethics should include (1) corruption, (2) tax, (3) customer relations (data protection for example) and (4) supply chain management,
d. See answer to Q3 for matters relating to sustainability-related governance.

Finally, it is of upmost importance to require companies to **disclose reliable targets** that are key for assessing the implementation of their policies and for monitoring commitments as well as progress. Although the non-binding guidelines published in June 2017 already emphasised this point (§3.4), **it should become compulsory**. Companies should also be required to describe the **measures** taken to ensure the achievement of these objectives. New requirements in this field should however be associated with **a more robust liability regime** for companies since the current legal uncertainty represents a significant obstacle for companies to provide information.

For each of the four non-financial matters identified in Article 19a of the Accounting Directive, and subject to the company's own materiality assessment, companies are required to disclose information about their business model, policies (including implemented due diligence processes), outcomes, risks and risk management (including risks linked to their business relationships), and key performance indicators (KPIs) relevant to the business.

Question 3.: Are there additional categories of non-financial information related to a company's governance and management procedures, including related metrics where relevant, (for example, scenario analyses, targets, more forward-looking information, or how the company aims to contribute to society through its business activities) that companies should disclose in order to enable users of their reports to understand the development, performance, position and impacts of the company? Please specify (no more than three).

The AMF fully supports the following statement from the 2019 guidelines on non-financial reporting, which can apply to all social and environmental issues: "*Governance and control systems are key to stakeholders' understanding of the robustness of a company's approach to climate-related issues*". Evidence shows that a majority of companies does not sufficiently disclose information about the governance of sustainability matters (see for instance the Alliance for Corporate Transparency 2019 Research Report or the French IFA 2019 study) while shareholders often express their interest in such information. Therefore, the AMF believes that three categories of governance-related information should be disclosed:

1. Information of how environmental and social issues are considered at the highest level of the company's strategy: including, *which sustainability matters are discussed at the board level (board or its dedicated committee) and at the executive board, how often sustainability-related issues are on these bodies' agenda and whether or not the NFS is reviewed before publication, etc.*

2. Description of the governance structure for sustainability-related issues*: including, a description of the different bodies of the companies which are in charge of sustainability-related issues and their respective role, and how it/they report(s) to top management*.

3. Description of the non-financial reporting governance, especially at the level of the materiality analysis and data collection*: including, the information systems created to support non-financial reporting, explain the governance associated to the materiality assessment or the identification of*

key performance indicators.

Information should also be required on how audit processes allow to ensure the implementation of non-financial policies.

Investment in intangible assets currently represents the majority of investment carried out by the private sector in advanced economies[1]. There is a long-standing debate about the need for better reporting of intangible investments in company reports, including in relation to sustainability[2].Irrespective of the potential future changes to accounting standards, it is likely to remain the case that a significant proportion of intangible assets will fail to meet the definition of an asset or the criteria for recognition as an intangible asset in the financial statements. The Accounting Directive currently makes no explicit reference to intangible assets in the Articles concerning the management report, other than the requirement to report about activities in the field of research and development in Article 19(2)(b).

Question 4.: In light of the importance of intangibles in the economy, do you consider that companies should be required to disclose additional non-financial information regarding intangible assets or related factors (e.g. intellectual property, software, customer retention, human capital, etc.)?

Yes	No	Don't know

In addition to the provisions of the NFRD, several other EU legislative acts require disclosures of sustainability-related information for financial sector entities:

- The Regulation on prudential requirements for credit institutions requires certain banks to disclose ESG risks as of 28 June 2022.
- The Regulation on sustainability- related disclosures in the financial services sector requires financial market participants to disclose their policies on the integration of sustainability risks in their investment decision- making process and the adverse impacts of investment decisions on sustainability factors, as of 10 March 2021.
- The Regulation establishing a framework to facilitate sustainable investment (the Sustainable Finance Taxonomy) creates new reporting obligations including for companies subject to the NFRD, starting in December 2021.

Question 5.: To what extent do you think that the current disclosure requirements of the NFRD ensure that investee companies report the information that financial sector companies will need to meet their new disclosure requirements?

[1] https://voxeu.org/article/productivity-and-secular-stagnation-intangible-economy

[2] The European Financial Reporting Advisory Group (EFRAG) is currently carrying out a research project on this topic. See http://www.efrag.org/Activities/1809040410591417/EFRAG-research- project-on-better-information-on-intangibles. The United Kingdom's Financial Reporting Council issued a consultation document about business reporting of intangibles in 2019. See https://www.frc.org.uk/news/february-2019/consultation-into-improvements-to-the-reporting-of.

Not at all	**To some extent but not much**	To a reasonable extent	To a very great extent	Don't know

In order to ensure that the financial sector entities comply with the new disclosure requirements, laid down in the different pieces of legislation, in the most effective and efficient manner, there might be scope for better coherence between the different disclosure requirements.

Question 6.: How do you find the interaction between different pieces of legislation (You can provide as many answers as you want)

It works well	There is an overlap	**There are gaps**	**There is a need to streamline**	It does not work at all	Don't know

Question 7.: In order to ensure better alignment of reporting obligations of investees and investors, should the legal provisions related to non-financial reporting define environmental matters on the basis of the six objectives set-out in the taxonomy regulation: (1) climate change mitigation; (2) climate change adaptation; (3) sustainable use and protection of water and marine resources; (4) transition to a circular economy (5) pollution prevention and control; (6) protection and restoration of biodiversity and ecosystems?

Yes	No	Don't know

Please provide any comments or explanations to justify your answer to questions 1 to 7 (5000 characters maximum, incl. spaces and brakes)

Q1 - The lack of comparability is problematic as companies are subject to rules that differ from one Member State to another. Such differences relate to key aspects of the reporting i.e. the scope of entities subject to the reporting, the content of the NFS, its location, the timing of publication, or the review of the information. Co-legislators should either delete national options in NFRD or establish a European Regulation.

In addition, when looking at the content of the NFS, it also appears that there is room from improvement from one company to another as provisions of the Directive are not clear nor specific to ensure the comparability and quality of the reporting.

However, the AMF considers that a relevant non-financial reporting should strike the right balance between seeking to ensure the comparability of the information between companies, while highlighting the specific features of each company.

Indeed, companies from different sectors share the same potential impact on the ecosystems. The AMF therefore believes that disclosure on a **limited set of cross-sectorial KPIs could be required from companies**. Adverse sustainability indicators as defined in Articles 4(6) and 4(7) of Regulation (EU) 2019/2088 could serve as a reference.
At the same time, an excessive search of comparability could lead to an excessive quantitative perception of these issues while the assessment of the qualitative context remains essential in this field. In addition, when applying the principle of financial **materiality, it remains key to reflect specificities of the company**. As such, **the absence of full comparability amongst companies appears inevitable.**

Q4 - Intangibles represent an increasing factor of value creation while they are generally not properly reflected in corporate reporting. Some intangible assets are already accounted for and/or disclosed in financial statements (software for example). However, internally developed intangibles are not recognized most of the time. Some are also difficult to value. As such, the EC should clarify how to value the human capital but also the natural capital. More generally, it should also take into account that such information can be business sensitive.

Q5 - By requiring institutional investors, asset managers or benchmarks administrators to provide information on the non-financial impact of their investment strategies and/or products, the latter will need non-financial KPIs reported by companies to meet their new disclosure requirements. As shown by the AMF's 2019 Report on CSR, there is a need for better harmonization of KPIs, especially those that are cross-sectorial, <u>and (more importantly) their underlying methodologies</u> because data are not often comparable from one company to another, even in the same sector. This clearly represents a difficulty for the financial sector to find and exploit reliable data. The AMF also believes that a better alignment between these legislations would represent an opportunity for companies to disclose more relevant data and therefore to limit data inflation.

Q6 - The interaction between the various legislative texts is a major point of attention given the increasingly rich and complex legal and regulatory environment. More specifically, there is a need to better define the interaction of NFRD with different pieces of legislation:

- With the prospectus:
    1. Under the prospectus regulation (PR), only risks that are material to an informed investment decision should be disclosed while in the NFS, companies must disclose the non-financial risks deemed material in relation to their business model.
    2. The risks to be included must be "net" risks that remain material after taking into account any mitigation measures while the NFS approach is focused on gross risks.
    3. Contrary to the prospectus, the NFS does not require a ranking of non-financial issues and does not require to clearly explain the risks' impact and probability of occurrence.
    4. PR requires an assessment of the impact of the risk, at least in qualitative terms, while the NFS does not encourage a reporting on impact of risks.
- Consistency of the KPIs provided for in the Taxonomy for companies with new rules defined by NFRD.
- In order to establish a universal set of non-financial KPIs, it is important to ensure that the KPIs to be requested under NFRD will be aligned with the KPIs set out in RTSs on Disclosure and those required for ESG Benchmarks. More specifically, when calculating the carbon footprint, it is crucial to include scope 3 GHG emissions in NFRD.

Overall, the AMF remains concerned by the misalignment of the timetable of Disclosure, Benchmark and Taxonomy Regulations on one hand, and the NFRD revision on other hand.

2. STANDARDISATION

Note: in this section, the word "standard" is used for simplicity. This should not be read as a suggestion that all relevant reporting requirements must be specified in a single normative document. Rather, "standard" is merely used as a shorthand that could encompass a consistent and comprehensive set of standards. Reporting standards define what information companies should report and how such information should be prepared and presented.

A requirement that all companies falling within the scope of the NFRD report in accordance with a common non-financial reporting standard may help to address some of the problems identified in section 1 (comparability, reliability and relevance).

<u>Question 8.</u>: In your opinion, to what extent would a requirement on companies to apply a common standard for non-financial information resolve the problems identified?

Not at all	To some extent but not much	**To a reasonable extent**	To a very great extent	Don't know

<u>Question 9.:</u> In your opinion, is it necessary that a standard applied by a company under the scope of the Non-Financial Reporting Directive should include sector-specific elements?

Yes	No	Don't know

A number of non-financial reporting frameworks and standards already exist. Some, including the standards of the Global Reporting Initiative (GRI), the framework of the International Integrated Reporting Council (IIRC), and the standards of the Sustainability Accounting Standards Board (SASB), aim to cover most or all relevant non-financial issues.

<u>Question 10.:</u> To what extent would the application of one of the following standards or frameworks, applied on its own, resolve the problems identified while also enabling companies to <u>comprehensively</u> meet the current disclosure requirements of the Non- Financial Reporting Directive, taking into account the double-materiality perspective (See section 4)?

	1	2	3	4	Don't know
Global Reporting Initiative			X		
Sustainability Accounting Standards Board	X				
International Integrated Reporting Framework	X				
Another framework or standard *					

1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

*Please specify other framework or standard (no more than three.)

TCFD
ISO Norms (14 001 and 26 000)

On 5 December 2019, the Economic and Financial Affairs Council adopted conclusions on deepening the Capital Markets Union, in which it invited the Commission to "consider the development of a European non-financial reporting standard **<u>taking into account international initiatives</u>**".

Most existing frameworks and standards focus on individual or a limited set of non- financial issues. Examples include the recommendations of the Task Force on Climate- related Financial Disclosures (TCFD), the UN Guiding Principles Reporting Framework (human rights), the questionnaires of the CDP (formerly the Carbon Disclosure Project), and the standards of the Carbon Disclosure Standards Board (CDSB). Several approaches have also been developed at EU level in the environmental area, including the Organisation Environmental Footprint and reporting under the Eco-Management and Audit Scheme (EMAS).

<u>Question 11.:</u> If there were to be a common European non-financial reporting standard applied by companies under the scope of the NFRD, to what extent do you think it would be important that such a standard should

incorporate the principles and content of the following existing standards and frameworks:

	1	2	3	4	Don't know
Global Reporting Initiative			X		
Sustainability Accounting Standards Board		X			
International Integrated Reporting Framework		X			
Task Force on Climate-related Financial Disclosures (TCFD)				X	
UN Guiding Principles Reporting Framework (human rights)			X		
CDP			X		
Carbon Disclosure Standards Board (CDSB)		X			
Organisation Environmental Footprint (OEF)		X			
Eco-Management and Audit Scheme (EMAS)	X				

Another framework or standard *					

1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

*Please specify other framework or standard (no more than three).

	1	2	3	4	5
1.SDGs				**X**	
2. Global Compact			**X**		
3.Natural Capital Coalition			**X**		

1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

[NA] Question 12.: If your organisation *fully* applies any non-financial reporting standard or framework when reporting under the provisions of the NFRD, please indicate the recurring annual cost of applying that standard or framework (including costs of retrieving, analysing and reporting the information).

Name of standard or framework (max 3)	Estimated cost of application per year, excluding any one-off start-up costs.

Small and Medium-Sized Enterprises (SMEs) often do not have the technical expertise nor resources necessary to prepare reports in accordance with state-of-the-art, sophisticated standards. This may imply that requiring SMEs to apply the same standards as large companies may be a disproportionate burden for SMEs.

At the same time, many SMEs are under increasing pressure to provide certain non- financial information to other businesses, in particular if they are suppliers of large companies. In addition, financial institutions are increasingly likely to request certain non-financial information from companies to whom they provide capital, including SMEs. In this respect, SMEs that do not provide non-financial information may experience a negative impact on their commercial opportunities as suppliers of larger companies or on their access to capital, and may not be able to benefit from new sustainable investment opportunities.

Question 13.: In your opinion, would it be useful for there to be a simplified standard and/or reporting format for SMEs?

Yes	No	Don't know

Question 14.: To what extent do you think that a simplified standard for SMEs would be an effective means of limiting the burden on SMEs arising from information demands they may receive from other companies, including financial institutions?

Not at all	To some extent but not much	To a reasonable extent	**To a very great extent**	Don't know

Question 15.: If the EU were to develop a simplified standard for SMEs, do you think that the use of such a simplified standard by SMEs should be mandatory or voluntary?

Mandatory	**Voluntary**	Don't know

In the responses to the Commission's public consultation on public corporate reporting carried out in 2018, just over half of the respondents believed that integrated reporting could contribute to a more efficient allocation of capital and agreed that the EU should encourage integrated reporting.

Question 16.: In light of these responses, to what extent do you agree that the body responsible for developing a European non-financial reporting standard should also have expertise in the field of financial reporting in order to ensure "connectivity" or integration between financial and non-financial information?

Not at all	To some extent but not much	To a reasonable extent	**To a very great extent**	Don't know

Question 17.: The key stakeholder groups with an interest in and contributing to the elaboration of financial reporting standards have historically been investors, preparers of financial reports (companies) and auditors/accountants. To what extent to do you think that these groups should also be involved in the process of developing a European non- financial reporting standard?

	1	2	3	4	Don't know
Investors				**X**	
Preparers				**X**	
Auditors/accountants			**X**		

1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

<u>Question 18.:</u> In addition to the stakeholders referred to in the previous question, to what extent to do you consider that the following stakeholders should be involved in the process of developing a European non-financial reporting standard?

	1	2	3	4	Don'tknow
Civil society representatives/NGOs			**X**		
Academics			**X**		
Others*					

1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

*Please specify other categories (no more than three).

	1	2	3	4
1. Non-financial rating agencies				**X**
2. The AMF believes that expectations of other stakeholders directly concerned by the non-financial information (customers and suppliers) should also be indirectly involved, through a consultation process for example (see comment to Q17-19 below).				**X**
3.				

1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

<u>Question 19.:</u> To what extent should the following European public bodies or authorities be involved in the process of developing a European non-financial reporting standard?

	1	2	3	4	Don't know
European Securities Markets Authority (ESMA)			**X**		
European Banking Authority (EBA)		**X**			
European Insurance and Occupational Pensions Authority (EIOPA)		**X**			
European Central Bank (ECB)					**X**
European Environment Agency (EEA)		**X**			
Platform on Sustainable Finance[3]		**X**			
Other*					

1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

*Please specify other European public bodies or authorities that you consider should be involved in the process of developing a European non-financial reporting standard (no more than three).

	1	2	3	4
1.				
2.				
3.				

1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

[3] Established under the Regulation on the establishment of a framework to facilitate sustainable investment (the "Taxonomy Regulation"), not yet published in the EU Official Journal.

National accounting standards-setters of several EU Member States are represented in the European Financial Reporting Advisory Group (EFRAG), which acts as the EU's voice and technical advisor in relation to financial reporting.

<u>Question 20.:</u> To what extent to do you consider that the following national authorities or bodies should be involved in the process of developing European non-financial reporting standards

	1	2	3	4	Don't know
National accounting standards-setters					**X**
Environmental authorities	**X**				
Other*					

1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

*Please specify other type of European public bodies or authorities that you consider should be involved in the process of developing a European non-financial reporting standard (3 maximum).

	1	2	3	4
1.				
2.				
3.				

1= not at all, 2= to some extent but not much, 3= to a reasonable extent, 4= to a very great extent

Please provide any comments or explanations to justify your answers to questions 8 to 20 (5000 characters, including spaces and brakes).

Q8 - Defining a common standard of reporting would help improving the comparability of the non-financial reporting, In order to be efficiently designed, such standard should leverage on the best elements of existing frameworks and be supplemented with additional elements on issues that have not been addressed so far. However, it would not resolve issues regarding (i) the quality of non-financial reporting (that could be addressed through clearer provisions on the materiality) and (ii) the reliability of non-financial reporting (that could be addressed through the review by a third-party independent body).

Q10 - The **GRI Standards** are useful because:

- they cover the main topics required by the NFRD on environmental (GRI 301 to GRI 308), social and employee matters (GRI 401 to GRI 410) respect for human rights (GRI 412), anti-corruption (GRI 205) and bribery matters;
- they also cover all pillars required by the Directive, notably in GRI 102 (business model, material non-financial risks/opportunities *etc.*);
- they place a strong emphasis on materiality ;
- they include risks/opportunities regarding the value chain.

However:

- GRI's focus is primarily on the impacts of the company's activities (i.e. 'inside-out' perspective) and does not address the impact of these matters on the company;
- the flexibility left for companies to choose the format of the reporting makes it more difficult to find where the information is located;
- entities can choose to apply some parts of the framework, which may hinder the comprehensiveness and objectivity of the reporting.

The approach taken by **SASB standards** largely differs from the NFRD requirements. They are sector-based: they do not provide homogeneous disclosures topics in all industries. They mainly consist of accounting metrics and do not cover other key pillars of the Directive (business models, policies applied, outcome of those policies nor the management of risks).
These standards are only dealing with the short-term financial impact and do not include 1) long-term financial impact nor 2) E&S impacts of business activities.
They nonetheless remain useful to some extent as they provide for examples of sector-based KPIs (with relating methodologies).

The **IIRC** has also developed a very detailed guidance on the notion of materiality and how to assess it. However, the major part of its guidance remains principle-based and it does not contain any provisions regarding the nature of non-financial information to disclose.

Q16 - Ensuring consistency and connection between financial and non-financial reporting is key as shown by the concept of materiality. One should nonetheless be careful on preserving the specificities of non-financial reporting as the non-financial reporting requires a different and broader set of skills. It is also crucial to avoid a «monetary bias» by limiting all non-financial matters to financial flows. Non-monetary and narrative information having also full relevance in this field. Forward-looking information can also be more prevalent in non-financial reporting than in financial reporting.

Q17 to 19 – The AMF believes that the European level is the most appropriate to ensure representativeness of stakeholders and efficiency of the standard-setting process.

Uncertainty regarding the composition/roadmap of the platform on sustainable platform does not allow to precisely assess the extent to which it should be involved. In any case, the AMF considers that the standard-setter should associate all different entities mentioned in questions 18 and 19 to the process.

The AMF believes that the following principles should be applied when building the governance of the standard-setting process:

- ✓ Independence of the organisation and strong prevention of conflicts of interests ;
- ✓ The organisation should have staff who are highly qualified and experienced in the field of sustainable finance;
- ✓ Strong, structured and precisely defined relationship with public authorities along with clear rules regarding accountability of the organisation ;
- ✓ Flexibility and agility (project management mode) to (i) be able to deliver under the same timing as the Level 1 and (ii) to influence international work as quickly as possible.
- ✓ Contribution/cooperation and efficient representation of all relevant stakeholders, defining different levels of involvement to distinguish those who are essential in the process (and could be designated member of such entity) and those who are less (and could be indirectly associated through consultation) ;
- ✓ Transparent consultation process.

If the EC were to choose to mandate the EFRAG, a choice that would meet expectations towards what should be a standard-setter, this should go along with specific measures regarding its governance to ensure such principles are fulfilled. In any case, ESMA, as a key public authority, should have a key role in this multi-stakeholder process.

3. APPLICATION OF THE PRINCIPLE OF MATERIALITY

The NFRD requires companies to disclose information “to the extent necessary for an understanding of the development, performance, position and impact of [the company’s] activities.” This materiality principle implies that companies reporting pursuant to the NFRD must disclose (i) how sustainability issues may affect the development, performance and position of the company; and (ii) how the company impacts society and the environment. This is the double-materiality perspective[4]. The two "directions" of materiality are distinct although there can be feedbacks from one to the other. For example, a company that with severe impacts on the environment or society may incur reputational or legal risks that undermine its financial performance.

'Material' information is defined in Article 2(16) of the Accounting Directive as "the status of information where its omission or misstatement could reasonably be expected to influence decisions that users make on the basis of the financial statements of the undertaking. The materiality of individual items shall be assessed in the context of other similar items." This definition is geared towards financial reporting, which is principally intended to serve the needs of investors and other creditors. By contrast, non-financial information serves the needs of a broader set of stakeholders, as it relates not only to the increasing impact of non-financial matters on the financial performance of the company, but also to its impacts on society and the environment. This may imply the need to provide an alternative definition of materiality for application in the context of non- financial reporting, or at least additional guidance on this issue.

<u>Question 21:</u> Do you think that the definition of materiality set-out in Article 2(16) of the Accounting Directive is relevant for the purposes of determining which information is necessary to understand *a company's development, performance and position*?

No, not at all	**To some extent but not much**	To a reasonable extent	Yes, to a very great extent	Don't know

<u>Question 22.:</u> Do you think that the definition of materiality set-out in Article 2(16) of the Accounting Directive is relevant for the purposes of determining which information is necessary to understand *a company's impacts on society and the environment*?

No, not at all	**To some extent but not much**	To a reasonable extent	Yes, to a very great extent	Don't know

<u>Question 23.:</u> If you think there is a need to clarify the concept of 'material' non- financial information, how would you suggest to do so? (5000 characters, including spaces and brakes)

Why does the concept need to be clarify?

1/ The distinction between financial materiality and environmental/social materiality is essential. Recital 3 of the Directive states that "*disclosure of non-financial information is vital for managing change towards a sustainable global economy by combining long-term profitability with social justice and environmental protection*". A 2011 communication from the European Commission also defines CSR as "*the responsibility of companies for their impacts on society*". At the international level, the 2007 report *Blueprint for a Green Economy* already defined the notion of intrinsic value of nature. Companies can be legitimately accountable for their impact on this value. Hence, non-financial issues cannot be translated only into financial flows and the double materiality principle is fundamental in this field.

[4] See also the Commission's non-binding guidelines on reporting climate-related information, section 2.2, page 4 - https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XC0620(01)#page=4.

2/ The double materiality principle needs to be clarified in a Level-1 text. Indeed, this notion is currently fragmented in different texts which were successively published and which do not have the same legal effect. Indeed, the term is not mentioned in the directive itself and has been explained very recently in non-binding guidelines.

3/ The reference to "materiality" as defined in Directive 2013/34/ EU (paragraph (16), Article 3) can create confusion for companies:

- It suggests that the financial impact of a non-financial issue must be precisely assessed to be able to consider it material or not.
- This definition tends to focus on a short-term horizon while non-financial reporting must be able to take into account the financial impact over the medium as well as the long-term horizon (example : climate-related issues).

As such, the term "materiality", as defined by the Accounting Directive, appears unsatisfactory because too narrow.

How should it be clarified?

In order to ensure regulatory stability, the AMF suggests to maintain the current wording of Article 1(1) as much as possible and to rather supplement it with useful additions.

Article 1 - Amendments to Directive 2013/34/EU

Directive 2013/34/EU is amended as follows:

(1) The following Article is inserted:

'Article 19a

Non-financial statement

1. Large undertakings which are public-interest entities exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year shall include in the management report a non-financial statement containing information to the extent necessary for an understanding ***by investors and all other stakeholders of*** *the undertaking's development, performance, position and impact of its activity, relating to, as a minimum,* ***environmental, social, business ethics, and governance of non-financial issues****, including:*

(a) a brief description of the undertaking's business model;
(b) a description of the policies pursued by the undertaking in relation to those matters, ***including measures taken to ensure their achievement****, due diligence processes implemented and* ***targets defined****;*
(c) the outcome of those policies;
(d) the principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, ***including in the medium to long term****, and how the undertaking manages those risks;*
(e) the principal impact of the undertaking on its eco-socio systems;
(f) non-financial key performance indicators relevant to the particular business.

When assessing which information should be disclosed in the non-financial statement, undertakings

shall consider whether the information is material from both the following perspectives:

- ***The perspective of financial materiality as referred by the company's "development, performance [and] position": the information referred to in the first subparagraph shall be disclosed to the extent that they may materially affect the enterprise value of the undertaking.***
  It aims at reflecting most important non-financial factors for the company's ability to remain solvent and profitable as well as to create value in the short, medium and long term. This must therefore be assessed on the one hand in the short term (in line with the definition of material information set out in Article 2(16) of the Accounting Directive) and on the other hand by medium and long term.

- ***The perspective of environmental and social materiality as referred by the company's "impact of [the company's] activities": the information referred to in the first subparagraph shall be disclosed to the extent that they may materially affect the environment and society.***
  It aims to report on the external impact of the company on the preservation of its eco-socio system, beyond any consideration relating to the impact on its activity and in light of EU sustainable goals and policies.

<u>Question 24.:</u> Should companies reporting under the NFRD be required to disclose their materiality assessment process?

Yes	No	Don't know

Please provide any comments or explanations to justify your answers to questions 21 to 24 (5000 characters, including spaces and brakes).

Reconciling materiality and the need for harmonization can appear difficult. The AMF believes that it depends on the implementation of the materiality principle.

The financial materiality should always be assessed in light of companies' business model and specificities. As such, harmonization should not be sought regarding the nature of non-financial issues to be disclosed but rather on the way the materiality analysis can be performed for example.
The AMF believes that designing a practical guide dedicated to companies for assessing the materiality in addition to the above-mentioned standard would be very useful. This could represent a voluntarily toolbox that companies, especially the smallest ones, can use to elaborate their materiality analysis. International framework standards already provide useful guidance in this field: the IIRC *(Materiality in <IR>, Guidance for the preparation of integrated reports*, November 2015), the Natural Protocol Coalition or, more recently, the World Economic Forum (*Embracing the New Age of Materiality, Harnessing the Pace of Change in ESG*, March 2020). The AMF's *2019 Report on CSR* also examples of what can be expected in terms of disclosure.

Such guidance could be detailed as follows:

STEP 1 - Identify material matters
Sub-step 1 – Tools used for identification

- → Using internal sources :
  - o Existing mapping of audit risks

- Existing materiality analysis regarding non-financial issues
- Any other internal work

→ Using external sources :
  - Sectorial comparison
  - Regulatory evolutions
  - Stakeholders involved
  - International reference frameworks (SDGs, Global Compact, GRI, SASB)

Sub-step 2 – Information on the governance of the materiality analysis

→ Department(s) responsible for the materiality analysis

→ Department(s) involved

→ Validation process and management levels involved (executive committee, board of directors, specialized board’s committee(s), *etc*.)

STEP 2 - Evaluating the importance of relevant matters

- Magnitude: will the matter’s effect on strategy, governance, performance or prospects is such that it has the potential to substantively influence value creation over time?
  - *Quantitative*: for example, in terms of money (e.g., sales, capital expenditures, return on investment), operations (e.g., production efficiency, output volume, capacity utilization) and market competitiveness (e.g., market share, customer volume, number of regions served).
  - *Qualitative* factors: for example, matters of regulatory infringements, corruption, workplace fatalities and environmental disasters can each erode reputation, sales opportunities and access to a skilled and engaged workforce.
  - *Area of the effect* : be it internal (on the business) or external (on the ecosystem);
- Identify the nature of effect:
  - Financial effect
  - Operational effect
  - Strategic effect
  - Reputational effect
  - Regulatory effects
  - Environmental effect
- Time horizon of effect: without defining specific time frames, time scales could be used:
  - *Short-term*: immediate, event-driven impacts (≈1 year);
  - *Medium-term*: over years through delayed, indirect or aggregated impacts (<5 years);
  - *Long-term*: more extensive time range and are generally more strategic than operational in nature (> 5 years).
- Potential uncertainty surrounding ESG matters:
  - explanation of the uncertainty,
  - range of possible outcomes or associated assumptions, and how the information could change
- Matters that were assessed to confidential and/or uncertain to be better disclosed;

STEP 3 – Priorizing

→ Such priorization should be done based on the magnitude of identified matters.

A materiality matrix could be used with stakeholders’ expectations on the ordinate and importance of matters (for the company or the ecosystem) on the x-axis.

On the contrary, when it comes to environmental and social materiality, a stronger harmonisation of the nature of information to be disclosed can be expected as the reference point for such assessment is European commitments toward sustainability (implementation of the 2030 Agenda for Sustainable Development, EU 2030 climate and energy targets *etc*.). As the Union is increasingly faced with the catastrophic and unpredictable consequences of climate change, resource depletion and other sustainability-related issues, urgent action is needed to mobilise capital not only through public policies but also by the private sector. Therefore, companies should be required to disclose specific information regarding their impact on the environment and the society. Such approach has been declined in the financial services sector through the Disclosure Regulation.

4. ASSURANCE

The NFRD requires that the statutory auditor or audit firm checks whether the non- financial statement has been provided if a firm falls within the scope of the Directive.

Article 34 of the Accounting Directive requires that the financial statements are audited, and that the statutory auditor or audit firm express an opinion whether the management report (i) is consistent with the financial statements for the same financial year; and (ii) has been prepared in accordance with the applicable legal requirements. Article 34 of the Accounting Directive also requires the statutory auditor or audit firm to state whether it has identified material misstatements in the management report and to give an indication of the nature of such material misstatements. However, the non-financial statement published pursuant to the NFRD – whether contained in the management report or a separate report – is explicitly excluded from the scope of Article 34 of the Accounting Directive. Consequently, the NFRD does not require any assurance of the content of the non-financial statement.

<u>Question 25.:</u> Given that non-financial information is increasingly important to investors and other users, are the current differences in the assurance requirements between financial and non-financial information justifiable and appropriate?

No, not at all	To some extent but not much	**To a reasonable extent**	Yes, to a very great extent	Don't know

<u>Question 26.:</u> Should EU law impose stronger assurance requirements for non-financial information reported by companies falling within the scope of the NFRD?

Yes	No	Don't know

There are two types of assurance engagement a practitioner can perform:

- Reasonable assurance reduces the risk of the engagement to an acceptably low level in the given circumstances. The conclusion is usually provided in a positive form of expression and states an opinion on the measurement of the subject matter against previously defined criteria.

- Limited assurance engagements provide a lower level of assurance than the reasonable assurance engagements. The conclusion is usually provided in a negative form of expression by stating that no matter has been identified by the practitioner to conclude that the subject matter is materially misstated.

<u>Question 27.:</u> If EU law were to require assurance of non-financial information published pursuant to the NFRD, do you think that it should require a *reasonable* or *limited* assurance engagement on the non-financial information published?

Reasonable	**Limited**	Don't know

Question 28.: If EU law were to require assurance of non-financial information published pursuant to the NFRD, should the assurance provider assess the reporting company's materiality assessment process?

Yes	No	Don't know

Question 29.: If assurance of non-financial information was required by EU law, should the assurance provider be required to identify and publish the key engagement risks, their response to these risks and any related key observations (if applicable)?

Yes	No	Don't know

Please provide any comments or explanations to justify your answer

Question 30.: If assurance of non-financial information was required by EU law, do you think that assurance engagements should be performed based on a common assurance standard?

Yes	No	Don't know

If you answered yes in reply to the previous question, please explain whether there is an existing assurance standard that could be used for this purpose or whether a new standard would need to be developed.

Assurance providers have generally worked together at defining an assurance standard at national level (in France for example). However, there is no existing common assurance standard at the European level.
A specific European standard could be therefore established. Other existing standards such as International Standards on Auditing could serve as examples.

Question 31.: Do you think that an assurance requirement for non-financial information is dependent on companies reporting against a specific non-financial reporting standard?

Yes	No	Don't know

[NA]Question 32.: If you publish non-financial information and that information is assured, please indicate the annual costs of such assurance.

If you provided an answer to the previous question, please describe the scope of the assurance services provided (issues covered, reasonable/limited, etc.).

Please provide any comments or explanations to justify your answer to question 25 to 32 (5000 characters, incl. spaces and brakes)

Q25 – The current differences in the assurance requirements between financial and non-financial information are not appropriate. Indeed, investors take decisions also based on non-financial information. As such, a minimum level of reliability of such information needs to be ensured and the existing gaps must be filled. Thus, the AMF encourages the EC to require a mandatory review by an independent assurance provider at the UE level. On the possibility, or even ambition, to reach the same level of assurance at the end, the AMF remains careful because uncertainty and underlying assumptions are fundamental and inevitable in the non-financial field, especially when it comes to environmental and climate-related topics (contrary to the financial one), which represents a huge obstacle to ensure the same level of reliability.

Q26 - The AMF is in favour of requiring, at the European level, a mandatory review by an independent assurance services provider. As experienced in France, such review would not only help companies ensure the consistency of their reporting, but also that the data collection process as well as the methodologies used for the indicators are robust. Such review therefore appears key since the quality of the reports is closely linked to the quality of the data collection. For users of non-financial information, stronger assurance requirements would also strengthen its reliability.

Q 27 – When considering the level of assurance needed on non-financial reporting, one must keep in mind that no assurance provider is auditing all key performance indicators. This is due in particular to the physical and methodological complexity of collecting and verifying non-financial information from international companies. As a result, they select the key performance indicators that they consider to be “the most important”. The difference between limited and reasonable assurance mainly relies on the depth of the assurance provider’s review on a specific set of KPIs. It does not mean that the assurance provider reviews a larger range of non-financial data. Hence, it is not by systematically requiring a reasonable assurance that the reliability of the whole NFS will be reinforced. Provided that a reasonable assurance costs companies time and money, its added value compared to a limited assurance should be precisely assessed, in light of stakeholders’ needs and utility. In addition, if historical quantitative information can be easily audited, it remains complex, if not technically impossible, to provide a comprehensive audit on qualitative/narrative and/or forward-looking information which represents a significant part of non-financial reporting.

In France, the AMF found that 42% of the sample companies requested an additional report from their assurance provider in order to obtain a reasonable assurance in 2018 (AMF’s 2019 Report on CSR). In almost all cases, these reviews covered KPIs already audited with a limited assurance that are the most important for the company.

Therefore, the AMF supports a limited level of assurance on the NFS with a reasonable assurance on quantitative information (for example, a limited number of KPIs that would reflect the most material non-financial issues). The reasonable assurance could firstly remain optional for all companies and become mandatory after 2025 for largest companies as a second step.

Q28/29 - As shown in the AMF's 2019 Report on CSR, the quality and reliability of the NFS is closely related to the quality of the risk assessment process. As such, the review of the NFS would be particularly useful when it would also include the materiality assessment process, evaluating the level of disclosure and the consistency of the different steps leading to the identification of material issues. In order to avoid any subjectivity in this assessment, key features of the materiality assessment process could be defined. The AMF is also supportive of requiring assurance providers to assess the relevance of KPIs and their underlying methodologies in comparison to non-financial risks identified and policies implemented.

Q31 –The AMF believes that the level of assurance requirement is closely linked to the norm or standard used by the company. If the quality of norm or standard is not ensured, it appears complicated to deliver a strong assurance on the content of the reporting. The quality of the standard must therefore be high and sufficiently detailed to be useful for assurance providers. In this regard, the ISA 3000 norm can serve as a good reference point.

5. DIGITISATION

The EU has introduced a structured data standard, the European Single Electronic Format (ESEF) under the Transparency Directive. With effect from 1 January 2020 listed companies in the EU shall report their annual financial reports in XHTML (audited financial statements, management report and issuer's responsibility statements). Additionally, if the consolidated financial statements are prepared in IFRS, the XHTML document should also be tagged using iXBRL elements specified in the ESEF taxonomy. This allows the information to be machine-readable. This is expected to produce a number of benefits, including cost saving for users of annual financial reports, greater speed, reliability and accuracy of data handling, improved analysis, and better quality of information and decision-making.

Additionally, the Commission is exploring opportunities to establish a single access point for public corporate information. In this respect, the Commission expects the High-level Forum on CMU to examine this topic and formulate recommendations from the Capital Markets angle in the coming months.

Question 33.: To what extent do you agree or disagree with the following statements regarding digitalisation of non-financial information?

	1	2	3	4	5	Don't know
It would be useful to require the tagging of reports containing non-financial information to make them machine-readable.			**X**			
The tagging of non-financial information would only be possible if reporting is done against standards.					**X**	
All reports containing non-financial information should be available through a single access point.					**X**	

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree)

Question 34.: Do you think that the costs of introducing tagging of non-financial information would be proportionate to the benefits this would produce?

No, not at all	To some extent but not much	To a reasonable extent	Yes, to a very great extent	**Don't know**

Question 35.: Please provide any other comments you may have regarding the digitalisation of sustainability information (5000 characters, incl. spaces and brakes):

In order to be able to tag reports containing non-financial information, comparability of data is needed. Current reporting practices does not appear mature enough. It is therefore crucial to first ensure comparability of non-financial data and information through, for example, the elaboration of a common standard of reporting.

6. STRUCTURE AND LOCATION OF NON-FINANCIAL INFORMATION

The default requirement of the NFRD is that companies under scope shall include their non-financial statement in their annual management report. However, the NFRD also allows Member States to allow companies to disclose the required non-financial information in a separate report under certain conditions, and most Member States took up that option when transposing the Directive. Companies can be allowed by national legislation to publish such a report up to six months after the balance sheet date.

The publication of non-financial information in a separate report has a number of consequences, including:

- Separate reports that include non-financial information are out of the legal mandate of the national competent authorities, whose mandate over periodic reports is limited to the annual and semi-annual financial reports (which include the management report).
- Separate reports that include non-financial information are not required to be filed in the Officially Appointed Mechanisms (OAMs) designated by Member States pursuant to Article 21(2) of the Transparency Directive.

Question 36.: Other consequences may arise from the publication of the non-financial statement as part of a separate report. To what extent do you agree with the following statements:

	1	2	3	4	5	Don't know
The option to publish the non-financial statement as part of a separate report creates a significant problem because the non-financial information reported by companies is hard to find (e.g: it may increase search costs for investors, analysts, ratings agencies and data aggregators).					**X**	
The publication of financial and non-financial information in different reports creates the perception that the information reported in the separate report is of secondary importance and does not necessarily have implications in the performance of the company					**X**	

1= not at all, 5= to a very great extent]

Question 37.: Do you believe that companies should be required to disclose all necessary non-financial information in the management report?

Yes	No	Don't know

<u>Question 38.:</u> If companies are allowed to publish the required non-financial information in a report that is separate from the management report, to what extent do you agree with the following approaches?

	1	2	3	4	5	Don't know
Legislation should be amended to ensure proper supervision of information published in separate reports.					**X**	
Legislation should be amended to require companies to file the separate report with Officially Appointed Mechanisms (OAMs).					**X**	
Legislation should be amended to ensure the same publication date for management report and the separate report.					**X**	

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree)

Please provide any comments regarding the location of reported non-financial information.

The AMF believes that ensuring the unicity of non-financial reporting materials and avoiding separate reports should be a priority to ensure accessibility and reliability of non-financial reporting - for this reason, the AMF would recommend that the NFS be mandatorily included in the management report at the European level.

The management report, including the non-financial statement, aims to provide a company's stakeholders with the information necessary to understand the company's development, performance, position and impact. Some non-financial information is also reported in the corporate governance statement, which is also part of the management report.

<u>Question 39.:</u> Do you consider that the current segregation of non-financial information in separate non-financial and corporate governance statements within the management report provides for effective communication with users of company reports?

No, not at all	**To some extent but not much**	To a reasonable extent	Yes, to a very great extent	Don't know

Please provide any comments or explanations to justify your answers to questions 36 to 39 (5000 characters, incl. spaces and brakes):

Q36 - If the NFS were to be published in a separate report, the AMF is of the view that a same level of reliability between the NFS contained in the management report and this *ad hoc* report should be ensured in terms of supervision and filing of this information.

Q39 - The connection between non-financial matters and corporate governance issues has grown over the last years. As such, most investors not only assess environmental and social aspects of investee companies but also look at their corporate governance. The merger of the non-financial statement and the corporate governance statement could be meaningful since to a certain extent the information can be redundant. However, if the Commission were to consider such a merger, it should take into consideration the current divergence of scope of application and the impact that this modification could have; it should also have in mind that the content of the corporate governance statement is closely linked to national legal frameworks; it should also think about harmonising and streamlining the content of the corporate governance statement. The principle of comply or explain should therefore be reassessed as well as the compliance with a national code.

7. PERSONAL SCOPE (WHICH COMPANIES SHOULD DISCLOSE)

The NFRD currently applies to large Public-Interest Entities (PIEs) with more than 500 employees. In practice this means large companies with securities listed in EU regulated markets, large banks (whether listed or not) and large insurance companies (whether listed or not) – all provided that they have more than 500 employees.

The Accounting Directive defines large undertakings as those that exceed at least two of the three following criteria:

(a) balance sheet total: EUR 20 000 000;
(b) net turnover: EUR 40 000 000;
(c) average number of employees during the financial year: 250.

Some Member States have extended the personal scope of the NFRD by lowering the threshold to 250 employees, in effect capturing all large PIEs.

Companies that are a subsidiary of another company are exempt from the reporting requirements of the NFRD if their parent company publishes the necessary non-financial information at consolidated level in accordance with the NFRD.

There are a number of potential arguments to support the extension of the personal scope of the NFRD:

- Changes in the legislative framework: following the adoption of the Regulation on sustainability-related disclosure in the financial services sector and of the Taxonomy Regulation, investors may require non-financial information from a broader range of investees in order to comply with their own sustainability-related reporting requirements.
- Large unlisted companies can have significant impacts on society and the environment. There may therefore be no *a priori* reason to differentiate between listed and non-listed companies in this respect. In addition, the difference in treatment between listed and non-listed companies in this regard may serve as a disincentive for companies to become listed, and therefore undermine the attractiveness of capital markets.
- Exempting PIEs that are subsidiaries limits the information about impacts on society and the environment, thus undermining the ability of stakeholders of such exempted subsidiaries to hold them accountable for their impacts on society and the environment, especially at local and national level.

<u>Question 40.:</u> If the scope of the NFRD were to be broadened to other categories of PIEs, to what extent would you agree with the following approaches?

	1	2	3	4	5	Don't know
Expand scope to include all EU companies with securities listed in regulated markets, regardless of their size.	**X**					
Expand scope to include all *large* public interest entities (aligning the size criteria with the definition of *large undertakings* set out in the Accounting Directive: 250 instead of 500 employee threshold).					**X**	
Expand scope to include *all* public interest entities, regardless of their size.		**X**				

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree)

<u>Question 41.:</u> If the scope of the NFRD were to be broadened to non-PIEs, to what extent would you agree with the following approaches?

	1	2	3	4	5	Don't know
Expand the scope to include *large non-listed* companies.					**X**	
Remove the exemption for companies that are subsidiaries of a parent company that reports non- financial information at group level in accordance with the NFRD.		**X**				
Expand the scope to include large companies established in the EU but listed outside the EU.					**X**	
Expand the scope to include large companies not established in the EU that are listed in EU regulated markets.					**X**	
Expand scope to include *all* limited liability companies regardless of their size.						**X**

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree)

<u>Question 42.:</u> If *non-listed* companies were required to disclose non-financial information, do you consider that there should be a specific competent authority in charge of supervising their compliance with that obligation?

Yes	**No**	Don't know

If yes, please specify who in your opinion should carry out this task (National Competent Authorities, European Supervisory Authorities, other…) and how.

Due to the nature of their activities, credit institutions and insurance undertakings have larger balance sheets than non-financial corporations. Hence, the vast majority of such institutions will exceed the balance sheet threshold in the definition of large undertakings set-out in the Accounting Directive. Moreover, the application of some public disclosure requirement of EU prudential regulation for credit institutions and insurance undertakings is defined based on various size thresholds.

For example:

- the Regulation on prudential requirements for credit institutions and investment firms includes in its definition of large credit institutions those with a total value of assets equal to or greater than EUR 30 billion;

- the same Regulation defines small and non-complex institutions as those that have EUR 5 billion or less total assets;

- the consultation paper published by EIOPA in October 2019 proposes to revise article 4 thresholds of Solvency II (below which entities are excluded from the scope of Solvency II), doubling the thresholds related to the technical provisions (from EUR 25M provisions to EUR 50M) and allowing Member States to set the threshold referring to premium income between the current EUR 5M and until a maximum of EUR 25M.

[NA] Question 43.: To what extent do you agree with the following statements relating to possible changes of the personal scope of the NFRD for financial institutions?

	1	2	3	4	5	Don't know
The threshold criteria for determining which banks have to comply with the NFRD provisions should be different from those used by Non-Financial Corporates.						
The threshold criteria for determining which insurance undertakings have to comply with the NFRD provisions should be different from those used by Non-Financial Corporates.						

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree)

Please provide any comments or explanations to justify your answers to questions 40 to 43 (5000 characters, incl. spaces and brakes):

First, the AMF believes that **the scope of application of the Directive is too limited for European companies to effectively contribute to the European Union's sustainable development goals**. In addition, the AMF is of the view that it is necessary to **harmonize the scope of application at EU-level by removing all national options**. Indeed, the options left to the Member States to transpose (and adapt) the scope of application of the Directive **hinders the comparability of the non-financial reporting** in Europe.

Drawing up a non-financial statement allows companies - **listed or not** - to identify and manage their social, environmental, societal and governance risks as well as opportunities. This strategic exercise is particularly interesting for **investors and banks but also customers, employees and other stakeholders of the company**. Thus, **the absence of non-financial reporting could deprive unlisted companies of funding and business opportunities,** since an increasing number of portfolio managers (private equity) and banks finance companies based on ESG criteria, and many large companies require non-financial reporting from their subcontractors, whatever their size.

It also appears that **the distinction between large listed and unlisted companies is artificial and only responds to a 'legal construction'**. Indeed, non-financial issues for unlisted companies are also crucial as **the emissions of greenhouse gases do not depend on being listed or not**. Such distinction is not present in all European regulations. For example, the obligation to publish a prospectus applies to all offers to the public of securities in order to protect investors - regardless of whether the company is listed or not.

In addition, the lack of balance between the requirements – which deemed sometimes excessive– on listed companies and those, much less demanding on unlisted companies of the same size, contributes to **reducing the attractiveness of European capital markets**. Indeed, the absence of non-financial reporting requirements for unlisted companies could create an **additional disincentive to listing**. Furthermore, **this distinction suggests that the NFS is exclusively geared to investors' needs**. However, recital 3 of Directive 2014/95 / EU underlines that non-financial information is to be able to "*meet the needs of* ***investors and other stakeholders, as well as the need to provide consumers with easy access to information about the impact of business on society***".

The AMF also believes that **additional criteria** should be applied to define companies that must publish a NFS. **Indeed, financial criteria are necessary to understand and capture the importance of a company**, its performances and its situation compared to their competitors. The criterion of **annual turnover** could be combined with **total of balance sheet** to reflect the value creation of a company. Indeed, it is legitimate to think that companies reaching certain economic thresholds are likely to generate a **significant impact on their ecosystem, either social, societal or environmental**.

Therefore, the AMF **would be in favour of requiring all listed and unlisted companies with more than 250 employees, and EUR 40 million net turnover or EUR 20 million balance sheet total, to disclose a non-financial statement**.

However, **proportionality** should be carefully taken into account when extending the scope of the Directive to companies having less than 500 employees. It appears necessary **to precisely assess such impact, in particular with regard to the number of listed/unlisted companies concerned, their sectors of activity and their environmental and social impacts**. **A lighter content should be required for companies with 250 to 500 employees in order to avoid burdensome requirements for these companies.** An exception could be made **for resources-intensive sectors that would have to disclose a more comprehensive NFS**. Such approach would differentiate requirements depending on the importance of the company in light of EU sustainable objectives and policies.

Regarding companies with less than 250 employees, the AMF considers that the disclosure of a non-financial statement **should remain optional**. However, when a company decides to publish a non-financial statement, it should follow the future European SME standard (question 15). The European Commission could elaborate a **guide for SMEs to assist them in this optional process and enhance comparability of their reporting** (see the recent report of Middlenext, the French SMEs' association, on SMEs' non-financial reporting practices).

Finally, for competitiveness purposes, it would seem appropriate to **include companies with branches in France within the scope of the revised Directive**. Legislators could adopt the same legislative approach as that used in the text about Disclosure of income tax information by certain undertakings and branches (Article 48b Undertakings and branches required to report on income tax information). To be relevant, the AMF believes that the reporting should be carried out at group level.

8. SIMPLIFICATION AND REDUCTION OF ADMINISTRATIVE BURDENS FOR COMPANIES

[NA] Question 44.: If your company publishes non-financial information pursuant to the NFRD, please state how much time the employees of your company spend per year carrying out this task, including time of retrieving, analysing and reporting the information? Please provide your answer in terms of full-time-equivalents (FTEs, 1 FTE= 1 employee working 40h a week during 250 working days per year). Please provide your answer for reports published in 2019, covering financial year 2018.

Please state the total cost per year of any external services, *excluding the cost of any assurance or audit services*, that you contracted to assist your company to comply with the requirements of the Non-Financial Reporting Directive. Please provide your answer for reports published in 2019, covering financial year 2018.

The majority of Member States have transposed the NFRD requirements into national legislation making very few changes to the wording of the legal provisions. Therefore, in the majority of the national legal frameworks, companies are required to comply with national legislation that is quite high level, not very prescriptive and do not require the use of any particular reporting standard.

Question 45.: To what extent do you agree with the following statements?

	1	2	3	4	5	Don't Know
Companies reporting pursuant to the NFRD face uncertainty and complexity when deciding what non-financial information to report, and how and where to report such information.				**X**		
Companies are under pressure to respond to individual demands for non-financial information from sustainability rating agencies, data providers and civil society, irrespective of the information that they publish as a result of the NFRD.					**X**	
Companies reporting pursuant to the NFRD have difficulty in getting the information they need from business partners, including suppliers, in order to meet their disclosure requirements.			**X**			

(1= totally disagree, 2= mostly disagree, 3= partially disagree and partially agree, 4= mostly agree, 5= totally agree)

Please provide any comments or explanations to justify your answers to questions 44 to 45 (5000 characters maximum, including spaces and brakes).

The AMF is of the view that a relevant application of the materiality principle is a key criteria to decide what non-financial information to report. As suggested under section 3, this supposes that the materiality principle is clear enough for companies and the materiality analysis easier to implement. In addition, requiring the disclosure of all non-financial information in a sole document would be a way to ensure reliability and accessibility of such information. This means that the expectation of conciseness, as explained in §3.3 of the Guidelines on non-financial reporting of 2017 June, should be qualified.

Regarding the 3rd and last assertion, companies reporting pursuant to the NFRD have difficulty in getting the information they need from business partners when they are entities with limited control/influence on such business partners (provided that such control/influence can exist through capital links or commercial agreement). In such case, there appears to be a double difficulty for companies to obtain the data:

- Due to the relation between the issuer/business partner: difficulty to collect the data and ensure its reliability;
- Due to the consolidation process at the company's level: ensuring homogeneity of data collected from different partners can be complicated.