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# Mandatory CSR reporting could hamper companies' social endeavours

The American Chamber of Commerce to the EU (AmCham EU) strongly endorses the views expressed by the European Commission on how corporate social responsibility (CSR) can help rebuild a globally competitive European economy on the basis of innovation and trust. Beyond the issue of restoring competitiveness, we accept our responsibilities as corporate citizens in community, national and world affairs; we serve our interests best when we serve the public interest. We acknowledge our obligation as businesses to help improve the quality of the societies we are part of. American firms have traditionally been expected to play a leadership role in the communities where they operate. Therefore, AmCham EU member companies have a long-standing incentive to demonstrate their contribution to society.

But AmCham EU member companies are equally convinced that the development of CSR activities should remain the prerogative of the individual company as a way of contributing to society beyond legal requirements.

As a result of corporate responsibility becoming more widely understood, accepted and practiced within mainstream companies, there begins to be greater convergence of activities included in companies' corporate responsibility platforms. However, in the absence of mandates or reporting formats, US companies still have the advantage of being able to define and interpret their own approaches to corporate responsibility in a way most relevant to their company and stakeholders. Consequently they have been able to innovate, and to measure and promote activities with greater freedom than their international counterparts.

To safeguard the voluntary and business-driven approach to CSR it is important that EU policy does not interfere with companies' innovation and flexibility to develop a CSR strategy most relevant to the specific needs of their stakeholders and their individual circumstances.

### **Assessment of the European Commission's proposal and the European Parliament's draft report**

Many AmCham EU members have long-standing histories of transparency and rigorous corporate responsibility reporting. But members do this reporting based on materiality, in other words based on what issues and stakeholders are relevant to them because of who they are and what their business is, not because it will fit a certain externally mandated format.

We believe that the Commission's proposal would undermine the voluntary principles that made CSR successful. In fact, this initiative is a major shift that creates the underpinnings for regulating CSR. In doing so, the Commission will put at risk the spirit of innovation that has energised CSR and the incentive for individual companies to adopt unique approaches to CSR will be diminished.

Although the proposed directive notionally embraces flexibility, principally by incorporating the comply-and-explain principle, AmCham EU is concerned that it would not leave companies free to determine what issues to report on based

on whether they are material to their business, and would certainly create unnecessary cost and administrative burden.

The draft directive on disclosure of non-financial information is not needed and would impose significant costs for companies that were not adequately considered by the Commission. The reasons advanced by the Commission to justify its proposal ignore business practices and wrongly assume that regulation is needed to boost Corporate Responsibility practices. CSR must remain business-driven and voluntary.

### *Modern-day corporate responsibility*

The idea that the value of an enterprise should be evaluated on criteria that go beyond marketplace performance and business results is not novel. Most companies aspire to be seen as great employers, trusted corporate citizens or valued members of the community. What is different today are the outcomes - the benefits that result when enterprises elevate those aspirations to business priorities, and manage them with the same level of discipline and passion that the company applies to client service or product innovation.

Across the world, businesses use different motivating principles to guide their involvement in CSR practices. All are underpinned by voluntarism. For most AmCham EU members, CSR involvement is best explained as a part or an extension of companies' core values. Another motivation for AmCham EU members is CSR's role as a significant driver of business growth.

The so-called value-driven approach to CSR, alongside the view of CSR as good business, represents the contemporary concept of Corporate Responsibility. Simply put, companies do not introduce CSR as a response to stakeholders' scrutiny and pressures. And regulation is certainly not a driver of CSR. Most U.S. firms introduced CSR practices as a voluntary expression of their own organizational culture. This values-driven approach reflects well the fact that CSR involvement has been ingrained in U.S. business norms and values.

### **Key areas for improvement**

Notwithstanding the fundamental concerns AmCham EU has with the Commission's proposal, we have the following suggestions for improving the draft that mirror closely the areas that represent our key concerns:

1. Companies should be allowed to decide themselves whether to publish a non-financial statement as part of the annual report or separately:
  - Sustainability reports are often published as stand-alone documents. In order to avoid excessive administrative burdens, companies must be allowed to refer to their report rather than making it an integral part of the annual report;
  - Moreover, this referral should be explicitly made applicable to companies whose headquarters or jurisdiction of corporation are

- located outside the EU and that publish a sustainability or diversity report at group level; and
- The consequence, possibly unintended, of the inclusion of non-financial statements in an annual report is to make CSR reporting auditable, which would also impose significant additional costs, not adequately considered by the Commission. The auditing of non-financial information would cause costs that are beyond any proportionality and would cause most severe damage to future CSR policies. In other words, requiring this information to be part of an audit fails any cost-benefit analysis.
2. AmCham EU calls for a broader ‘comply or explain’ model based on materiality rather than a set of pre-defined topics:
- In prescribing topics subject to disclosure (cf. environmental, social and employee matters, respect for human rights, and anti-corruption and bribery matters), the proposed ‘comply or explain’ model is overly restrictive and does not allow for reporting based on materiality;
  - There is no one-size-fits-all approach to CSR. The list of issues that companies address in their CSR activities and on which they may report depends on whether the provision of such information is of use to stakeholders and of benefit to the company;
  - Some companies may have legitimate reasons to focus efforts on fewer, more comprehensive programs that address issues critical to society and to their companies. This means prioritising issues, supporting projects consistent with those priorities, and proactively disengaging from efforts that are no longer consistent with those priorities. However, such an approach may not be valued under a regulatory framework that puts the focus on a few pre-defined topics; and
  - Any reporting model should therefore use a broader ‘comply or explain’ approach based on materiality rather than a set of pre-defined topics, or else risk fostering a ‘tick the box’ attitude to corporate responsibility.
3. The requirement to provide information on ‘related risks’ would impose disclosure of sensitive business information:
- In addition, for many companies corporate responsibility innovation must begin at the research and development phase. It is less about managing risks and more about how sustainable business practices can impact competitive differentiation and drive innovation; and
  - Therefore, AmCham EU calls for the exclusion of related risks from the disclosure requirement.
4. In respect to diversity disclosure:
- AmCham EU member companies are already subject to rigorous SEC and NYSE requirements and discloses information about board diversity; and

- To the extent that companies are listed in countries outside the EU and subject to a well-developed body of law and regulations, they should not be subject to parallel and additional EU regulations.

With regard to the European Parliament's draft report:

1. The rapporteur understands the risks of detailed reporting and we welcome his effort to introduce the possibility not to disclose on going or seriously prejudicial risks:
  - However, whereas the amendment related to risk seems at first sight mitigation, in the absence of a clear exclusion of auditability in the directive, a management decision to not disclose will be subject to audit and therefore potentially challenged;
  - The basic problem is that the text does not provide for certainty as regards who is to judge or verify whether information is confidential or whether risk is severe once a decision to not disclose has been made. As the text stands it will be the auditors, who will also be the ones to verify whether information provided is 'adequate'; and
  - In practice, a whole staff function would have to be established to perform this test in order to qualify the decision as having or not having a severe impact. This would result in significant time and cost of people involved as every decision in any company must always be supported by a documented rationale but would also unduly interfere with management's prerogative to run its business.
2. The draft report seeks to set a very high standard for due diligence:
  - AmCham EU anticipates a heavy additional organisational burden, diverting resources otherwise available for further improving worthwhile corporate responsibility activities. We believe the directive also needs to guard against imposing additional regulatory burdens on European companies, or on companies operating in Europe that do not apply outside Europe. Doing so will make European companies less competitive and discourage investment in Europe, to the long-term detriment of growth and jobs.
3. The draft report proposes that in providing non-financial information, companies should, as a general rule, rely on a set of international CSR principles and guidelines:
  - Many AmCham EU member companies integrate CSR into their company strategies because they believe in the benefits of doing so. We are concerned that the proposed provisions related to adherence to international CSR instruments may slow down innovation and development of CSR by companies;
  - There is insufficient evidence that regulating adherence to such instruments has in fact improved performance over time. AmCham EU members prefer to exert leadership out of a belief that strong CSR performance and corporate responsibility linked to values

builds more effective and profitable business and there is evidence that this approach works;

- AmCham EU suggests that in forcing adherence to international CSR principles and guidelines, the directive will put at risk the spirit of innovation that has energised CSR and the incentive for individual companies to adopt unique approaches to CSR will be diminished; and
- Companies' use of international CSR frameworks or guidelines as a basis for drawing up their non-financial statement should remain optional.

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*AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled €1.9 trillion in 2012 and directly supports more than 4.2 million jobs in Europe.*

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POSITION STATEMENT