



STATUTORY INSTRUMENTS.

S.I. No. 360 of 2017

EUROPEAN UNION (DISCLOSURE OF NON-FINANCIAL AND
DIVERSITY INFORMATION BY CERTAIN LARGE UNDERTAKINGS
AND GROUPS) REGULATIONS 2017

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I, FRANCES FITZGERALD, Minister for Jobs, Enterprise and Innovation, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups¹, hereby make the following Regulations:

PART 1

PRELIMINARY MATTERS

Citation, construction and commencement

1. (1) These Regulations may be cited as the European Union (Disclosure of Non-Financial and Diversity Information by certain large undertakings and groups) Regulations 2017.
- (2) The Principal Act and these Regulations shall be read together as one.
- (3) These Regulations shall come into operation on 21 August 2017.

Applicable financial years

2. Save where otherwise provided, these Regulations shall apply for financial years commencing on or after 1 August 2017.

Interpretation

3. (1) In these Regulations—

“Directive” means Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups¹;

“diversity report” shall be construed in accordance with Regulation 6;

“large traded company” shall be construed in accordance with Regulation 6;

“non-financial statement” shall be construed in accordance with Regulation 5;

“Principal Act” means the Companies Act 2014 (No. 38 of 2014).

¹OJ No. L 330, 15.11.2014, p.1.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 4th August, 2017.*

(2) A word or expression which is used in these Regulations and is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

(3) In relation to a group directors' report, including a group non-financial statement, Regulation 5 has effect as if the references in that Regulation to "the applicable company" were references to "the applicable company and its subsidiary undertakings included in the consolidation taken as a whole".

PART 2

Applicable company

4. (1) For the purposes of these Regulations, a company—

(a) which, in relation to a financial year—

(i) qualifies as a large company under section 280H of the Principal Act,

(ii) has an average number of employees which exceeds 500, and

(iii) is an ineligible entity, or

(b) in the case of a holding company, a company which, in relation to a financial year—

(i) qualifies as a large company under section 280H of the Principal Act,

(ii) is the holding company of a group, the aggregate average number of employees of which exceeds 500, and

(iii) is an ineligible entity,

shall, in these Regulations, be referred to as an "applicable company".

(2) For the purposes of paragraph (1)(a)(ii), the average number of employees of a company shall be determined by applying the methods specified in section 317 of the Principal Act in respect of determining the average number of persons employed by a company for purposes of subsection (1)(a) of that section.

(3) For the purposes of paragraph (1)(b)(ii), the aggregate figure shall be ascertained by aggregating the equivalent figures determined in accordance with paragraph (2) for each member of the group.

(4) For the purposes of paragraph (3), the figures for each subsidiary undertaking of the holding company shall be those included in its entity financial statements for the relevant financial year—

- (a) where its financial year ends with that of the holding company, that financial year, and
- (b) where it does not, its financial year ending last before the end of the financial year of the holding company.

Non-financial statement

5. (1) The directors of an applicable company shall, for each financial year, include in the directors' report a statement containing non-financial information (in these Regulations referred to as a "non-financial statement").

- (2) The non-financial statement shall—
 - (a) subject to this Regulation, be included as a specific section of the applicable company's directors' report,
 - (b) contain information, to the extent necessary for an understanding of the development, performance, position and impact of its activity relating to, at least, the following matters:
 - (i) environmental matters;
 - (ii) social and employee matters;
 - (iii) respect for human rights;
 - (iv) bribery and corruption,
 - (c) include a brief description of the applicable company's business model,
 - (d) include a description of the policies pursued by the applicable company in relation to the matters referred to in subparagraph (b), including due diligence processes implemented and a description of the outcome of those policies,
 - (e) include a description of the principal risks related to the matters referred to in subparagraph (b), linked to the applicable company's operations including, where relevant and proportionate—
 - (i) its business relationships, products or services which are likely to cause adverse impacts in those areas, and
 - (ii) how the applicable company manages those risks, and
 - (f) include an analysis of the non-financial key performance indicators relevant to the particular business.
- (3) Where the directors of an applicable company do not pursue policies in relation to one or more of the matters referred to in subparagraph (b) of paragraph (2), the non-financial statement shall include a clear and reasoned explanation for not so doing.

(4) The non-financial statement shall also, where appropriate, include references to, and additional explanations of, amounts included in the statutory financial statements of the applicable company.

(5) An applicable company may omit, from its non-financial statement, information relating to impending developments or matters in the course of negotiation whose disclosure, in the opinion of the directors, could seriously prejudice the applicable company's competitive position, provided that such omission does not prevent a fair and balanced understanding of the applicable company's development, performance, position and impact of its activity.

(6) Where information has been omitted in accordance with paragraph (5), the applicable company shall state in its non-financial statement the fact that such information has been omitted and the reason for such omission.

(7) In preparing a non-financial statement, an applicable company may rely on national, European Communities or international frameworks, and where it does so, it shall specify which frameworks it has relied upon.

(8) The information required under paragraphs (2) to (7) may be set out in a separate statement in accordance with paragraphs (9) and (10).

(9) Where an applicable company provides the information required under paragraphs (2) to (7) in the form of a separate statement, a copy of such statement shall—

(a) be published on the website of the company within 6 months of the financial year end date of the company, and a statement that a copy of the statement has been so published or will be so published, together with the address of the website of the company, shall be included in the directors' report, or

(b) (i) be annexed to the annual return of the company, or

(ii) where the applicable company is an investment company, be delivered to the Registrar together with the documents referred to in section 1401A(2) of the Principal Act, or

(iii) where the applicable company is an investment company within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011), be delivered to the Registrar together with the documents referred to in Regulation 42A(3) of those Regulations.

(10) Where an applicable company provides the information required under paragraphs (2) to (7) in the form of a separate statement, such statement shall be attached to every balance sheet, referred to in section 341 of the Principal Act, laid before the annual general meeting of the company and shall be signed on behalf of the directors by 2 of the directors of the company.

(11) An applicable company which is a subsidiary company shall be exempt from the obligation to prepare a non-financial statement if that company and any subsidiaries of the company are included in the group non-financial statement or the separate statement of another undertaking, drawn up in accordance with these Regulations or in accordance with the provisions implementing the Directive in a Member State other than the State.

(12) Where an applicable company provides the non-financial statement referred to in paragraph (1) or the separate statement referred to in paragraph (8), the applicable company is deemed to have met the requirements of section 327(3)(b) of the Principal Act.

(13) The statutory auditors of the applicable company, when preparing the report required by section 391 of the Principal Act in respect of the applicable company, shall establish that the company has prepared the non-financial statement either in its directors' report or in a separate statement.

Diversity report

6. (1) The directors of a traded company that is a large company (in these Regulations referred to as a “large traded company”) shall include in its corporate governance statement a report (in this Regulation referred to as a “diversity report”).

(2) A diversity report shall include—

(a) a description of the diversity policy applied in relation to the company's board of directors with regard to aspects such as age, gender or educational and professional backgrounds,

(b) the objective of that diversity policy,

(c) how that diversity policy has been implemented by the company, and

(d) the results of that policy in the financial year.

(3) Where a large traded company does not apply any diversity policy referred to in paragraph (2), the directors of the large traded company shall include in its corporate governance statement an explanation as to why there is no policy.

(4) Where a large traded company prepares a corporate governance statement, the statutory auditors of the company, when preparing the report required by section 391 of the Act of 2014, shall state whether in their opinion, based on the work undertaken in the course of the audit, the information required pursuant to paragraph (2) or (3), as the case may be, is contained in the corporate governance statement.

(5) Paragraph (1) shall not apply to a large traded company which has only issued securities, other than shares, admitted to trading on a regulated market, unless such company has issued shares which are traded in a multilateral trading facility.

(6) In paragraph (5), “multilateral trading facility” has the meaning assigned to it by Article 4(1) of Directive 2004/39/EC of the European Parliament and of Council of 21 April 2004² on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.

Construction of references to exemption

7. (1) Any provision of these Regulations which provides for an exemption from a requirement of these Regulations shall not prevent the company concerned, if it so chooses, from doing the thing that the provision provides it is exempted from doing (“the specified thing”).

(2) If the company concerned chooses to do the specified thing—

- (a) the provisions required by these Regulations to be complied with, in relation to the doing of such a thing, and
- (b) the provisions specified by these Regulations to apply, in a case where such a thing is done,

as the case may be, shall be complied with or shall apply accordingly.

(3) Paragraph (1) applies whether the expression “shall be exempt” or “need not” or any other form of words is used in the provision concerned.

Offences and penalties

8. A person who fails to comply with Regulation 5(1), 5(2), 5(3), 5(4), 5(6), 5(9), 5(10), 6(1), 6(2) or 6(3) shall be guilty of an offence and shall be liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months, or to both.

Powers of Director under Regulations

9. For the purposes of these Regulations, the Director may—

- (a) investigate instances of suspected offences under these Regulations,
- (b) enforce these Regulations, including by the prosecution of offences by way of summary proceedings, and
- (c) do all such acts or things as are necessary or expedient for the performance of his or her functions under these Regulations.

²OJ No. L 145, 30.4.2004, p. 1.



GIVEN under my Official Seal,
30 July 2017.

FRANCES FITZGERALD,
Minister for Jobs, Enterprise and Innovation.

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nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)
or through any bookseller.

ISBN 978-1-4468-2810-6



9 781446 828106

€3.05

Wt. (B32933). 315. 8/17. Essentra. Gr 30-15.