

## Italy Implements Directive Requiring Non-Financial Disclosures for Large European Undertakings

***Large public-interest companies and parent companies must disclose several types of non-financial information — for the benefit of both investors and consumers — or face monetary penalties.***

Directive 2014/95/EU of October 22, 2014 amending Directive 2013/34 EU as regards disclosure of non-financial and diversity information by large undertakings and groups (the Non-Financial Reporting EU Directive) has been implemented in Italy by Legislative Decree No. 254 of December 30, 2016, in force since January 25, 2017 (the Decree).

The Non-Financial Reporting EU Directive requires EU large public-interest undertakings and groups to include a non-financial statement in their management reports. Moreover, EU large public-interest undertakings which are also companies admitted to trading on EU regulated markets are required to include a description of diversity policies in their annual corporate governance report.

The new provisions are applicable for the fiscal year starting on January 1, 2017 and during the 2017 calendar year.

This *Client Alert* briefly summarizes the main provisions of the Non-Financial Reporting EU Directive as implemented in Italy by the Decree.

### Objective – Corporate Social Responsibility

The Non-Financial Reporting EU Directive enacts the legislative proposals and plans adopted in recent years by European institutions in the field of corporate social responsibility. Such initiatives are intended to encourage large companies and groups to disclose non-financial information on sustainability. Such disclosures should to identify sustainability risks, increase trust among investors, stakeholders and consumers, as well measure, monitor and manage large companies' performance and their impact on society and the global economy.

## Scope – Large Public-Interest Undertakings

The provisions of the Non-Financial Reporting EU Directive as implemented by the Decree apply to large public-interest undertakings (Large Public-Interest Undertakings) which are:

- Italian companies admitted to trade on Italian regulated markets or on regulated markets of any other EU Member State
- Banks
- Insurance and reinsurance companies that both:
  - Have had an average of more than 500 employees during the relevant financial year
  - Have crossed at least one of the following thresholds at the end of the relevant financial year:
    - Balance sheet total: €20 million
    - Net turnover: €40 million

Notably those issuers whose securities (debt or equity) are listed on a multilateral trading platform (e.g. AIM, EuroMTF, GEM or ExtraMOT PRO) or other listing venues which do not fall within the definition of regulated markets pursuant to the applicable EU rules, are **not** subject to the Decree and are not required to comply with it.

## Non-Financial Statement

### Content

In order to enhance the consistency and comparability of non-financial information disclosed to the public, Large Public-Interest Undertakings are required to prepare on an annual basis a non-financial statement (the Non-Financial Statement) that must contain information necessary to understand the company's development, performance, position and the impact of its business activity (relating to, as a minimum, environmental, social and employee matters, respect for human rights, anticorruption and bribery matters) including all of the below:

- A description of the company's business model, including the compliance model adopted pursuant to legislative Decree 231/2001, also with reference to the matters above
- A description of the company's policies covering the matters described above (including any internal due diligence process implemented and/or the results achieved by the policies)
- The principal risks related to the matters described above including, where relevant, the company's business relationships, products or services which are likely to give rise to adverse impacts, and a description of the company's risk management system

In relation to the matters above, the Non-Financial Statement must include information related to:

- The use of energy resources (distinguishing between renewable and non-renewable energy) and water use
- Greenhouse gas emissions and air pollution

- The impact, including in the medium-term, of the principal risks linked to the company's operations on the environment and on health and safety measures
- Social and employee-related matters, together with the actions taken to ensure gender equality, implementation of relevant conventions of supranational and international organizations and social dialogue
- Respect for human rights, measures implemented to prevent violations and actions taken to prevent forms of discrimination
- Instruments in place to fight corruption (both active and passive) and bribery

The relevant information must be compared to that given in the previous financial years (except for the first year of application (2017) in relation to which the comparison with previous years may be given in general terms only) in accordance with the standard methodology and key performance indicators that the company must adopt among those relevant in its specific business and consistently with the impact of such business.

### **Comply or Explain Principle**

Where Large Public-Interest Undertakings do not pursue policies in relation to one or more matters covered by the Non-Financial Statement, they must provide a clear and detailed explanation according to the “comply or explain” principle.

### **Omission of Information – Safe Harbor**

Except for the disclosure obligations applicable to companies admitted to trading on regulated markets, the directors of a Large Public-Interest Undertaking, after consulting with the board statutory auditors (or the different internal control corporate body), may authorize with a specific resolution the omission in the Non-Financial Statement of specific information concerning imminent developments or transactions in course of negotiation. This type of information may only be omitted if the disclosure of such information could jeopardize the commercial position of the company. The omission will not be permitted if this would prevent a fair and balanced understanding of the development of the company, its performance, position and impact of its business activity. If the Large Public-Interest Undertaking omits the relevant information, it must disclose in the Non-Financial Statement that it has exercised this option.

### **Responsibility**

The directors of a Large Public-Interest Undertaking are responsible for ensuring that the non- financial statement is prepared in accordance with the Decree and the directors must act with due diligence and professionalism. The board of statutory auditors (or the different internal control corporate body) oversees compliance with the relevant provisions and reports on its control activities to the general shareholders' meeting in its annual report.

The independent auditors appointed to audit the financial statement of a Large Public-Interest Undertaking are required to verify the effective preparation of the Non-Financial Statement by the directors and issue a specific report (separate from the one on the financial statements and published together with the Non-Financial Statement) on the conformity of the information provided in the Non-Financial Statement with the provisions of the Decree and the methodology and key indicators adopted by the Large Public-Interest Undertaking.

## **Consolidated Non-Financial Statements, Exemptions and Equivalence**

Large Public-Interest Undertakings that are Italian or EU parent companies of a group that meets (on a consolidated basis) the same criteria set for Large Public-Interest Undertakings (a Large Public-Interest Group) must prepare on an annual basis a consolidated non-financial statement that must contain information necessary for an understanding of a Large Public-Interest Group's development, performance, position and the impact of its activity (the Consolidated Non-Financial Statement). The Consolidated Non-Financial Statement includes the same information required for the standalone Non-Financial Statement.

The Decree provides for the following exemptions:

- A Large Public-Interest Undertaking is exempted from the obligation to issue its standalone Non-Financial Statement if either:
  - It issues a Consolidated Non-Financial Statement
  - It and its subsidiaries included in its consolidation perimeter (the Subsidiaries) are included in the Consolidated Non-Financial Statement issued by (a) an Italian Large Public-Interest Undertaking required to prepare the consolidated financial statements pursuant to the applicable Italian provisions or the IFRS (the Italian Parent Company) and subject to the same requirement to issue the Non-Financial Statement and the Consolidated Non-Financial Statement; or (b) a company regulated by the law of an EU Member State required to prepare the consolidated financial statements pursuant to Directive 2013/34/EU (the EU Parent Company) that issues the Non-Financial Statement and the Consolidated Non-Financial Statement according to the Directive 2013/34/EU as amended by the Non-Financial Reporting EU Directive
- A Large Public-Interest Undertaking that is the Italian Parent Company of a Large Public-Interest Group is exempted from the obligation to issue the Consolidated Non-Financial Statement if it is a Subsidiary included in the Consolidated Non-Financial Statement issued by (a) an Italian Parent Company subject to the same requirement to issue the Non-Financial Statement and the Consolidated Non-Financial Statement, or (b) a EU Parent Company that issues the Non-Financial Statement and the Consolidated Non-Financial Statement according to the Directive 2013/34/EU as amended by the Non-Financial Reporting EU Directive.

## **Publication**

At the option of the Large Public-Interest Undertaking, the Non-Financial Statement and the Consolidated Non-Financial Statement may be:

- Included in the management report/consolidated management report as a specific section labelled as "Non-Financial Statement" or "Consolidated Non-Financial Statement" as the case may be; such a section contains all the information required by the Decree or makes a cross reference to other reports providing such information, as required by the law, including the separate report under the next bullet point below and indicates the corporate website of the Large Public-Interest Undertaking where such information is published
- Issued as a separate report provided that it is labelled as "Non-Financial Statement" or "Consolidated Non-Financial Statement." Following approval by the board of directors, the report is delivered to the board of statutory auditors (or different internal control corporate body) and to the auditors within the terms provided for the presentation of the draft financial statements and consolidated financial

statements and is then published by the directors in the relevant company's register together with the management report/consolidated management report.

### **Voluntary Issue of Non-Financial Statements**

The Decree provides that any company that does not qualify as a Large Public-Interest Undertaking and that is beyond the scope of the provisions at issue may nonetheless prepare and publish on a voluntary basis Non-Financial Statements and/or Consolidated Non-Financial Statements in compliance with the Decree providing such statements with a label of conformity with the Decree. The voluntary Non-Financial Statements are prepared on a proportional basis, taking into account the size of the company in relation to the number of employees, the accounting results, any cross-border activity so that the fair understanding of the business, its development, results and impact is not compromised.

Supervision and review activities due by the board of statutory auditors and auditors may be omitted on the voluntary statements provided that (a) such statement clearly indicates that the statement has not been reviewed and checked; (b) at the end of the relevant financial year at least two of the following dimension requirements are met (1) average number of employees during the financial year: less than 250; (2) balance sheet total less than €20 million; and (3) net turnover: less than €40 million.

### **Diversity Policy**

In addition to the Non-Financial Statements, Large Public-Interest Undertakings which are Italian companies listed on regulated markets are required to include in their annual corporate governance report, to be published according to the applicable Italian securities laws (article 123-*bis* of Legislative Decree 58/1998, the Italian Securities Act) a description of the diversity policy applied in relation to the composition of the management and control corporate bodies with regard to aspects such as age, gender, educational and professional background, the objectives of the diversity policy and its results in the reporting period. If no diversity policy is applied, the listed company must provide a clear and detailed explanation of this choice according to the comply or explain principle.

The information about the diversity policy may be omitted by listed companies which, at the end of the relevant financial year, do not exceed at least two of the following thresholds: (1) balance sheet total: €20 million; (2) net turnover: €40 million, and (3) average number of employees during the financial year: 250.

### **Sanctions**

The Decree provides for the following administrative monetary penalties that can be imposed by the Italian Securities Commission (*Commissione Nazionale per le Società e la Borsa*, CONSOB) according to the rules on administrative proceedings set forth in the Italian Securities Act:

- (i) Penalties ranging from €20,000 to €100,000 against the directors of Large Public-Interest Undertakings for omitting to file the Non-Financial Statement with the companies registry. If the submission occurs during the first 30 days after the deadline has expired, the penalty is reduced by one third
- (ii) Penalties ranging from €20,000 to €100,000 against the directors of Large Public-Interest Undertakings for omitting to attach the report issued by the auditors to the Non-Financial Statement or the Consolidated Non-Financial Statement
- (iii) Penalties ranging from €20,000 to €100,000 against the board of directors of Large Public-Interest Undertakings for filing with the company's register either Non-Financial Statements or Consolidated Non-Financial Statements that do not comply with the Decree; the same penalties apply to statutory

auditors which do not report to the general shareholders' meeting that the statements do not comply with the Decree

- (iv) Penalties ranging from €50,000 to €150,000 against the directors and statutory auditors for omitting material information or including false material information in the Non-Financial Statements or the Consolidated Non-Financial Statement filed with the company's register
- (v) Penalties ranging from €20,000 to €50,000 against the auditors which omit to verify that the Non-Financial Statement has been actually drafted
- (vi) Penalties ranging from €20,000 to €100,000 against the auditors for failing to certify the conformity of the Non-Financial Statement, or for certifying the conformity of a Non-Financial Statement or a Consolidated Non-Financial Statement that actually do not comply with the Decree.

Penalties under points (ii), (iii) and (iv) above are reduced by the half for directors and/or statutory auditors of companies issuing non-financial statements on a voluntary basis.

## Conclusion

If Large Public-Interest Undertakings have not yet planned for Non-Financial Statements or Consolidated Non-Financial Statements for the current 2017 financial year, they should do so immediately in order to comply with the Decree and avoid monetary penalties, which CONSOB can impose.

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