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FirstSocialLife

***Non-financial reporting directive (2014/95/EU): an opportunity to develop the participation and inclusion rights of people with disabilities and prevent the risk of social dumping. The crucial role of EWCs and Trade Unions - VS/2019/0048***

## LEGISLATIVE BACKGROUND

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# Disability Manager: a proposal for diversity in strategic management



**From the 'Disability Act' to  
non-financial reporting**

# UN Convention on Disability



Art. 26 of the UN Convention on the Rights of Persons with Disabilities refers to "empowerment and rehabilitation" as tools for independent living and requires States to take effective and adequate measures to enable persons to "achieve and maintain the greatest possible autonomy, full physical, mental, social and professional ability, and to achieve full inclusion and participation in all areas of life".

It provides for the duty of States to organise, strengthen and develop comprehensive services and programmes in particular in the fields of health, employment, education and social services.

It is essential to promote the supply, knowledge and use of technologies, support tools and "reasonable accommodation", which are designed, implemented, identified for and with people.

# The Theme of the project



The Disability Management refers to a methodology (developed in the United States and Canada) with the aim to involve companies in a process of improving working conditions and actively promote the maintenance of jobs for workers with disabilities (International Human Resources Management) in an inclusive perspective, in relation to the health of the person at various stages of his/her life.

**The theme is related to those of the Work Life Management, welfare, intergenerational solidarity, the digital revolution that affect the banking sector.**

# The Theme of the Project



Being part of a company or being able to maintain one's employment are important objectives that can only be pursued if the whole "social system" works:

The well-being of a person, as a citizen and as a worker, is a multidimensional legal value that depends not only on the economic resources available, but on all the components of human life:

- health and the possibility of care
- the quality of housing
- the access and quality of school
- the state of the environment
- independent participation in the production process
- access to knowledge and technological innovations, etc..

# The European Pillar of Social Rights



It has two identical legal forms: a Commission Recommendation, C(2017) 2600 final, 26 April 2017, and a Proposal for a joint declaration by Parliament, the Council and the Commission.

It sets out twenty principles and fundamental rights to support the good functioning and fairness of labor markets and social protection systems, in three categories: equal opportunities and access to the labor market; fair working conditions; social protection and inclusion.

Preamble: (16) "The EPSR does not prevent Member States or social partners from setting more ambitious social standards".

(20) "Social dialogue plays a central role in strengthening social rights and increasing sustainable and inclusive growth. In line with their autonomy in negotiating and concluding agreements and their right to collective bargaining and action, the social partners at all levels have a crucial role to play in the development and implementation of the European social rights pillar".

# The European Pillar of Social Rights



On the other side, however, the European Parliament Internal Market Committee (IMCO) has rejected a series of proposals put forward by the European Disability Forum to improve the existing proposal for a European Accessibility Act.

The lack of common accessibility requirements (so-called standard requirements) for products and services throughout the EU area creates many problems for people and also for those who work on the aspects of integration and maintenance of employment: national trade unions, associations and Disability Managers.

# The Theme of the Project



European Works Councils (EWCs) can be the inclusive, supportive, transnational negotiating space, able to set common minimum standards and, ultimately, the homogeneous area of action and the '*acquis communautaire*' for disability management policies at the workplace.

The strategic idea at the base of the Project is to establish the figure of the Disability Manager within each EWC!



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# The "negotiating mission" of the Disability Manager within the EWC



The promotion of transnational framework agreements.

The promotion of coherent and consequent territorial agreements (the factory level) with trade unions, associations of people with disabilities and their families, as well as with other relevant '*Third Sector*' organizations, in order to promote the employment of people with disabilities ("advocacy of rights");

The use of disability as a cultural and strategic lever to foster the company's identity through active policies.

The Disability Manager has the difficult role to suggest the board of directors to really change perspective with respect to the prejudice that has always existed about health, precisely for the psychological aspects underlying it (and often dismissed as "situation of weakness and/or unproductiveness"): to promote organizational changes rather than turnover!

# The «reasonable accommodations» as a new business



When we mention the term "accommodation", we think of huge and difficult to bear expenses. In reality, very often they are "common sense" solutions, far from expensive and even useful save worker's skills or to make a good and profitable recruitment.

Further, the "non-standard" relationships (agile work, cloud, etc..), because of the flexibility that they involve, do not induce employers to incur expenses or make organizational changes.

The "non-standard approach" is not a cost, but a productive investment and an innovative and strategic management lever.

It is necessary to overcome the logic of the standardization of inputs, because diversification means enrichment.

# “The European Accessibility Act”: news



On 13 March 2019, the European Parliament approved the highly anticipated "Disability Act", which aims to

- make products and services such as computers, smartphones, tablets, TVs, ATMs and banking services, payment terminals, etc. accessible
- entrust national market surveillance authorities with the task of monitoring compliance by private entities.

Further positive aspects are the impact on "public procurement rules for accessible products and services, so that public authorities no longer use taxpayers' money in products, services and facilities that discriminate against people with disabilities".

After the formal approval of EU Council and the publication on the Official Journal of the EU, Member States will have 3 years to transpose the Directive.

# The Project is in the "middle ground"



While the legislative process is next to its conclusion, constituting the "Community regulatory infrastructure", it will be necessary to implement the negotiating process, using the Community rules that already exist:

bigger banks and companies are subject to the new Non Financial Reporting Directive, with the rule of "comply or explain" with respect to the description of the measures adopted also on the subject of diversity.

The negotiating nature of the measures is an added value and needs to be measured.

# Directive 2014/95/UE



Directive 2014/95/EU of the European Parliament and of the Council on the disclosure of information of a non financial nature and of information on diversity by certain undertakings and large groups entered into force on 6 December 2014.

The Directive amends the 2013/34/EU Directive on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings.

The companies concerned have started to apply the Directive from 2018 for the information relating to the financial year 2017.



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# Directive 2014/95/UE



## Non-binding guidelines, but requirements

Article 2 of the Directive refers to the "Guidelines for reporting" and states that "the Commission shall develop non-binding guidelines on the methodology for reporting non-financial information, including general and sectoral key performance indicators, in order to facilitate the relevant, useful and comparable disclosure of non-financial information by undertakings. [...]».

Art. 1 of the Directive provides that the undertakings concerned:

**‘must include in their annual report a non-financial statement containing at least [...] information to the extent necessary for an understanding of the undertaking's performance, results, position and impact of its activities [...]’.**

‘*Whereas*’ 8 of the Directive states that "undertakings which are subject to this Directive should provide adequate information on the aspects where the main risks of serious consequences are most likely, and on the risks already materialised".

# Directive 2014/95/UE



## European Commission Guidelines

In assessing the relevance of the information, several factors may be taken into account, including:

The business model, strategy and key risks: objectives, strategies, the approach and the management systems, values, tangible and intangible assets, the value chain and key risks of a company,

Main sectoral issues: topics already identified by competitors, customers or suppliers are likely to be relevant to a company.

The interests and expectations of stakeholders.

# Directive 2014/95/UE



EC Guidelines.. Correct, balanced and comprehensible information

The non-financial statement should take due account of the favourable and unfavourable aspects and the information should be presented in an impartial manner. The non-financial statement should take into account the information needs of the parties concerned. Users of the information should not be misled by material misrepresentations, omissions of material information or disclosure of immaterial information.

The non-financial statement should clearly distinguish facts from points of view and interpretations. Information may be made more accurate and correct, for example, by taking the following steps:

Appropriate corporate governance arrangements (e.g. by giving certain independent members of the board or a board committee responsibility for sustainability and/or transparency),

Robust and reliable testing, internal control and reporting

Effective involvement of stakeholders.



# Directive 2014/95/UE



EC Guidelines... Complete but concise information

Art. 1 of the Directive provides that the undertakings concerned:

‘must include in their annual report a non-financial statement containing at least environmental, social, staff-related, human rights, anti-corruption, active and passive corruption information to the extent necessary for an understanding of the company's performance, results, position and impact of its activities’.

## Strategic and forward-looking information

The statement should provide insights into a company's business model, strategy and implementation, and explain the short, medium and long-term implications of the information provided.

## Stakeholder-oriented information

Companies are required to consider the information needs of all interested parties and should focus on the needs of stakeholders as a collective group rather than on the needs or preferences of individual or atypical stakeholders or those with unreasonable information needs. Where appropriate, such entities may include, inter alia: investors, workers, consumers, suppliers, public authorities, vulnerable groups, social partner

# Directive 2014/95/UE



EC Guidelines... Business model

Art. 1 of the Directive states that the declaration of a non-financial nature shall contain information, including

a) "a brief description of the business model of the company;".

The business model of an enterprise describes how it generates and maintains value through its products or services in the long term. The business model provides a framework for the overall management report. It provides an overview of the functioning of the enterprise and the logic of its structure. In simpler terms, it explains what a company does, as well as how and why it does it.

# Directive 2014/95/UE



EC Guidelines... Result

Article 1 of the Directive states that the non-financial declaration must contain information, including

c) "the outcome of such policies;".

Businesses should provide a useful, fair and balanced representation of the outcome of their policies. Non-financial information disclosed by firms should help investors and other interested parties to understand and monitor the firm's performance.

Relevant disclosures on policy results can provide useful information on the strengths and vulnerabilities of the firm under review. The non-financial statement should provide a complete and concise representation of the results of an undertaking's operations and activities.

# Directive 2014/95/UE



EC Guidelines...

Main risks and their management

Article 1 of the Directive states that the declaration of a non-financial nature must contain information which includes:

d) "the main risks associated with these aspects of the undertaking's activities, including, where appropriate and proportionate, the commercial relationships, products and services which may have an adverse effect on these areas, and the way in which the undertaking manages them;".

Undertakings should disclose information about their main risks and how they manage and mitigate them. Such risks may relate to their activities, products or services, their supply chain and business relations or to other aspects. This would include an appropriate perspective on the main risks in the short, medium and long term. Enterprises should explain how the key risks can influence their business model, operations, financial performance and the impact of their activities.

It is envisaged that an undertaking will disclose relevant information on the main risks, whether they arise from the undertaking's own decisions or actions or from external factors, and explain the processes used to identify and assess those risks. Disclosures, where appropriate and proportionate, should include relevant information on supply and subcontracting chains.



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# Directive 2014/95/UE



EC Guidelines...

Thematic aspects

Art. 1 of the Directive states that the undertakings concerned "[must] include in their annual report a non-financial statement containing at least the environmental, social, personnel, human rights and anti-corruption information necessary for an understanding of the undertaking's performance, results, position and impact of its activities".

Relevant disclosures should provide a balanced and comprehensive representation of the company's performance, results, position and impact of its activities. Under certain circumstances, companies may consider that disclosure of detailed information on upcoming developments or issues under negotiation could seriously affect their position. However, the disclosure of summary information that does not seriously undermine it can make a significant contribution to the overall objective of transparency.

Article 1 of the Directive provides that "Member States may permit the omission of information concerning imminent developments or matters under negotiation in exceptional cases where [...] the disclosure of such information could seriously harm the commercial position of the undertaking [...]".

Thematic aspects are often interlinked. For example, an environmental issue relating to the operations, products or supply chain of a company may have an impact on the safety and/or health of consumers, employees or suppliers or on the reputation of the brand. Companies are required to provide a clear, fair and complete representation that includes all relevant aspects of an issue.

# Directive 2014/95/UE



EC Guidelines... Social and personnel issues

Companies are required to provide relevant information on social and personnel issues:

The implementation of core International Labour Organisation conventions,

Diversity issues, such as gender diversity and equal treatment in employment (including age, gender, sexual orientation, religion, disability, ethnic origin and other relevant aspects),

Employment issues, including consultation and/or participation of workers, employment and working conditions,

Trade union relations, including respect for trade union rights,

Human capital management, including restructuring management, career management and employability, remuneration system, training,

Health and safety at work,

Relations with consumers, as well as consumer satisfaction, accessibility, products with possible effects on consumer health and safety,

Relations with the community, including the social and economic development of local communities

The impact on vulnerable consumers,

Responsible marketing and research

# Directive 2014/95/UE



Art. 1 requires large listed companies to disclose in their corporate governance statement:

‘a description of the diversity policy applied in relation to the composition of the administrative, management and supervisory bodies of the company in relation to aspects such as, for example, age, gender, or educational and professional background, the objectives of this diversity policy, the manner of implementation and the results over the reporting period. If no such policy is applied, the statement shall contain an explanation of why this is the case.

Aspects of diversity (strategic diversity)

The description of the diversity policy should specify which diversity criteria are applied, as well as the reasons for choosing them. When choosing these criteria, all relevant aspects of diversity should be considered in order to ensure that the board presents sufficient diversity of views and expertise necessary for a good understanding of current business and long-term risks and opportunities related to the business. The nature and complexity of the business should be taken into account when assessing the profiles necessary to ensure optimal diversity of the board.

Whereas 18 states: "the diversity of competences and points of view ... allows us to constructively challenge the decisions taken by the management and to be more open to innovative ideas, thus fighting against the homologation of the opinions of the members, the so-called phenomenon of group thinking. It thus contributes to the effective supervision of management and efficient governance of the company..."



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# How was the Directive transposed in the EU?



Below is a description of the investigation space of the project and the working groups.

On the issue of diversity as a strategic option, it is important to understand how national legislation has moved:

What diversity? Extended to disability?

What inclusion? Also in decision-making participation?

What protection? Only health and safety?

Which "comply"? Information only or also verification tools?

Which negotiating space, if any, has been recognised for bilaterality?

Alternative question: which space, in the absence of all this, has been exercised by the social partners (agreements, agreements, negotiations, disputes)?



# Italy: The Legislative Decree 254/2016



## SUSTAINABILITY DISCLOSURE

The decree, which came into force on January 25, 2017 and whose provisions apply to financial years beginning on or after January 1, 2017, broadened the scope of the cases to include those set out in the European directive, a circumstance that is contrary to custom. In this case, in addition to significant sanctions, the decree provides for the possibility of recognising a sort of "reputational attribution" to entities that, although not obliged to comply with sustainability disclosure requirements (i.e. companies that are neither in the public interest nor large companies), prepare a non-financial declaration in accordance with its provisions.

The decree, in fact, imposes the obligation to communicate certain CSR actions implemented and does not determine the obligation to "implement" those actions and, therefore, companies will only have to, albeit carefully, justify why their choices not to implement CSR actions, which remain voluntary.



# The Legislative Decree 254/2016



Subjects obliged to disclosure:

1. public-interest entities which:

have more than five hundred employees during the financial year (generally the calendar year);

have exceeded at least one of the following two size limits at the balance sheet date: a) balance sheet total: EUR 20 million (where total means total assets in the balance sheet); b) total net revenues from sales and services: EUR 40 million.

2. the parent companies, which are public-interest entities (the holding companies), of a group which:

have a total of more than five hundred employees during the financial year;

have consolidated financial statements in which at least one of the following conditions is met: a) total assets in the balance sheet greater than EUR 20 million; b) total net revenues from sales and services greater than EUR 40 million.

# Analysis of law and agreements



The Italian situation can be a typical example of the analysis to be carried out in the working groups at the level of single countries and single companies.

The transnationality of the solutions must start from the analysis of the context conditions of the existing EWCs:

Are they a good breeding ground?

Are there already examples of good negotiating practice?

What are the current obstacles to their diffusion?