

Notification to the Dutch Authority for the Financial Markets

in respect of Ahold Delhaize N.V.

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Background and overview of Notification

1 Background

This Notification is addressed from ClientEarth and the Plastic Soup Foundation to the Dutch Authority for the Financial Markets (the **AFM**) and it relates to the management report of Ahold Delhaize N.V. in respect of the financial year ending 31 January 2021, published on 2 March 2021 (the **Management Report**).¹

1.1 ClientEarth

ClientEarth is a non-profit environmental law organisation with offices in London, Brussels, Berlin, Warsaw, Madrid, Los Angeles and Beijing. ClientEarth's Plastics Team analyses the legal implications of the financial risks related to single-use plastics for companies, company directors, investors and regulators. In Brussels, ClientEarth's registered address is 60 Rue du Trône, (3ème étage), Box 11, Ixelles, 1050 Brussels, Belgium with registered number 0714.925.038.

1.2 Plastic Soup Foundation

Plastic Soup Foundation is a non-profit organisation based in the Netherlands, focussing on combatting plastic pollution at source through public campaigning, advocacy with governments and companies, dissemination of scientific research and education. Plastic Soup Foundation's registered address is Sumatrakade 1537, 1019 RS Amsterdam, the Netherlands.

1.3 Ahold Delhaize N.V.

Ahold Delhaize N.V. (**Ahold Delhaize**, also referred to as the **Group**) is a food retailer group incorporated in the Netherlands. It owns 19 grocery retail brands that operate in the United States (the **US**), the Benelux region, central and southeastern Europe and Indonesia through approximately 7,000 grocery stores and serving an estimated 54 million customers per week. Its headquarters are located at Provincialeweg 11, 1506 MA Zaandam, the Netherlands. Its shares are listed on the Euronext Amsterdam and Brussels stock exchanges and American Depositary receipts are traded on the over-the-counter market in the United States (**US**) and on the QTCQX International Market Place.

2 Overview of Notification

2.1 In this Notification, we set out for the AFM how Ahold Delhaize has breached the applicable legal requirements governing the content of the non-financial statement by failing to provide *material* information on the topic of plastic packaging in the Management Report.

¹ Available at: <https://www.aholddelhaize.com/media/10540/ahold-delhaize-annual-report-2020.pdf>.

2.2 The fundamental premise of this Notification is that, for the purposes of the applicable legal requirements, Ahold Delhaize:

- (i) causes material adverse impacts to the environment through its use of plastic packaging; and
- (ii) faces material financial risks linked to its use of plastic packaging,

and has breached the applicable requirements by failing to provide material information relating to these two aspects of the topic of plastic packaging.

2.3 References to *plastic packaging* in this Notification are to primary² and secondary³ product packaging, which meet the definition of “*single-use plastic product*” set out in Article 3(2) of Directive 2019/904⁴ (the **Single-Use Plastics Directive**), which is as follows:

“a product that is made wholly or partly from plastic and that is not conceived, designed or placed on the market to accomplish, within its life span, multiple trips or rotations by being returned to a producer for refill or re-used for the same purpose for which it was conceived”.

2.4 References to “*making available on the market*” (and variations) in the Notification have the following meaning:

*“any supply of a product for distribution, consumption or use on the market of any country in the course of a commercial activity, whether in return for payment or free of charge”.*⁵

2.5 This Notification is structured as follows:

- 2.5.1 In Part I, we provide background on the topic of plastic packaging and its relevance to Ahold Delhaize to contextualise and support the arguments in this Notification. This comprises evidence that Ahold Delhaize makes a significant amount of plastic packaging available on the market during the course of its business activities, and evidence of the adverse impact of plastics – plastic packaging in particular – on the environment.
- 2.5.2 In Part II, we set out the applicable legal requirements governing the content of the non-financial statement. We also summarise how Ahold Delhaize has breached these requirements in respect of the Management Report, before setting out these breaches in detail in Parts III and IV.
- 2.5.3 In Part III, we demonstrate that the topic of plastic packaging gives rise to a number of risks that could have financial implications for the business of Ahold Delhaize. We demonstrate that the characteristics of these risks are such that they are financially material pursuant to the applicable legal requirements, and that Ahold Delhaize has breached these requirements by failing to disclose information on these risks in the Management Report.
- 2.5.4 In Part IV, we assess the information provided by Ahold Delhaize relating to its impact on the environment resulting from its placement of plastic packaging on the market. We

² Commonly understood to be the packaging in direct contact with the product itself.

³ Commonly understood to be packaging used to group individual products together, for sale and display purposes.

⁴ Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment.

⁵ Adapted from Article 3(7) of the Single-Use Plastics Directive to reflect that Ahold Delhaize operates in non-Member State and Member State markets.

demonstrate that Ahold Delhaize has failed to provide material information on these impacts, as it is obliged to pursuant to the applicable legal requirements, concluding that Ahold Delhaize has breached these requirements for a second time.

- 2.5.5 In Part V, we ask that the AFM respond to the matters set out in this Notification by issuing a recommendation to Ahold Delhaize that it publish a press release in which it sets out the deficiencies in the Management Report described in this Notification, and provides information to rectify them.

Part I

Context: the grocery retail sector and the plastic crisis

3 Overview of Part I

- 3.1 In Part I of this Notification, we provide necessary background on the topic of plastic packaging and its relevance to Ahold Delhaize to contextualise and support our arguments. This comprises:
- (i) evidence that Ahold Delhaize makes a significant amount of plastic packaging available on the market in the course of its business activities; and
 - (ii) evidence of the adverse impact of plastics – plastic packaging in particular – on the environment.
- 3.2 Ahold Delhaize does not disclose the quantity of plastic packaging it makes available on the market in the Management Report, nor the proportion of plastic packaging it uses in comparison to other materials, or packaging-free and re-usable formats. As a result, it is not possible for an external stakeholder to quantify how much plastic packaging Ahold Delhaize makes available on the market.
- 3.3 As such, in Section 4 below, we draw on evidence regarding the grocery retail sector as a whole to show that Ahold Delhaize makes available a significant amount of plastic packaging on the market.

4 The grocery retail sector and plastic packaging

- 4.1 Grocery retailers – of which Ahold Delhaize is a major player internationally⁶ – are a key corporate actor in the modern global food system. Like many of its competitors, Ahold Delhaize brands sell both ‘branded goods’, which are manufactured and packaged by other companies, and ‘own-brand’ goods, which are privately sold in its own stores, and the manufacture and packaging of which it controls directly.⁷

⁶ For example, market data company, Kantar, listed Ahold Delhaize as 15th in its 2020 ranking of global retailers by sales. This includes a number of companies that do not operate (primarily) in the grocery retail sector, meaning that Ahold Delhaize would feature even higher on a ranking of global grocery retailers. Ranking available at: <https://www.kantar.com/inspiration/retail/top-50-global-retailers-cn>.

⁷ For Ahold Delhaize, the breakdown of sales is 30.1% own-brand, 69.9% branded in the US and 48.5% own-brand, 51.5% branded in Europe. Management Report, p. 76 and p. 79 respectively.

- 4.2 The sector is highly consolidated, with a relatively small number of actors dominating the sale of food regionally.^{8,9} Ahold Delhaize, for example, notes in the Management Report that it has a leading market share in almost every geography it operates in.¹⁰ In North America, supermarkets and convenience stores account for 93% of consumer food purchases and in Europe, 55%.¹¹ Packaging is a prominent feature of this system, used for facilitating storage, handling, transport and protection of food, as well as for marketing purposes.¹² Indeed, the food sector has been estimated to consume up to 35% of global single-use packaging production.¹³
- 4.3 Of all packaging types used for food applications, plastic is dominant.¹⁴ It has been estimated that up to 37% of food sold in Europe is packaged in plastic,¹⁵ and that around 40% of plastic packaging production – itself the largest single application of plastic¹⁶ – is destined for the food industry.¹⁷
- 4.4 In light of the prevalence of plastic packaging in food retail, and the dominance of grocery retailers in the sale of food, grocery retailers are understood to be a major – if not the largest – source of plastic packaging.¹⁸ In the absence of public data, accurately estimating the amounts of single-use plastic packaging that can be attributed to a single actor such as Ahold Delhaize is challenging. However, we note the following points:
- 4.4.1 A 2018 study estimated that supermarket plastic packaging represented a 30 – 43% share of total domestic plastic packaging in the UK, France and Germany.¹⁹ Assuming that the proportion is similar in the Netherlands, where Ahold Delhaize brand Albert Heijn had a market share of just under 35% in 2020,²⁰ Albert Heijn alone could be the source of 10 – 14% of domestic plastic packaging in the Netherlands.²¹

⁸ For example, the grocery retail sector has been described as an “*oligopoly*” and in 2014, the top ten grocery retailers account for up to 29.3% of total goods sales. Sabrina Chakori, Ammar Abdul Aziz, Carl Smith, Paul Dargusch, “Untangling the drivers of the use of single-use food packaging”, *Ecological Economics* 185, (2021), 107063.

⁹ International Panel of Experts on Sustainable Food, “*Too big to feed: Exploring the impacts of mega-mergers, consolidation and concentration of power in the agri-food sector*”, (2017).

¹⁰ “We have a leading market share nearly everywhere we operate, with 95% of our sales in 2020 coming from brands that have a number one or two position in their markets.” Management Report, p. 36.

¹¹ Food and Agriculture Organization of the United Nations, “*The future of food and agriculture: Trends and challenges*”, (2017), p. 107.

¹² Chakori et al, “Untangling the drivers of the use of single-use food packaging”, (2021).

¹³ Ibid.

¹⁴ Ibid.

¹⁵ “Plastics role in avoiding food waste may have been overestimated”, *Friends of the Earth*, 10 April 2018.

¹⁶ Laura Parker, “Fast facts about plastic pollution”, National Geographic, 20 December 2018.

¹⁷ ING Economics Department, “*Plastic packaging in the food sector: Six ways to tackle the plastic puzzle*” (2019)

¹⁸ For example, data collected by UK sustainability NGO, WRAP, identified the grocery retail sector as “*the largest source of plastic packaging*” in the UK, responsible for 43% of plastic packaging waste in 2014. Cited in Rethink Plastic, Zero Waste Europe, Friends of the Earth Europe, “*Unwrapped: how throwaway plastic is failing to solve Europe’s food waste problem (and what we need to do instead) (Annex: Data and definitions)*” (2018), p. 6

¹⁹ Ibid., pp. 7 – 8.

²⁰ <https://www.statista.com/statistics/729905/albert-heijn-market-share-in-supermarket-retail-in-the-netherlands/>.

²¹ On the basis that the population of the Netherlands was 17.44 million in 2020, and that of the United Kingdom was 67.22 million the same year. Assuming equivalent market share between Tesco in the UK and Albert Heijn in the Netherlands (this is conservative, since Albert Heijn reportedly has a higher market share), this amounts to 67,913 tonnes.

- 4.4.2 UK supermarket Tesco (identified as a “peer” to Ahold Delhaize in the Management Report)²² reported in 2018 that it had placed 261,204 tonnes of single-use packaging on the market in the preceding year (branded and own-brand).²³ Since its market share is comparable to that of Albert Heijn in the Netherlands (Tesco reportedly had a market share of 27.4% the year of the study), accounting for the difference in population size between the UK and the Netherlands, this could mean that Albert Heijn makes available approximately 68,000 tonnes of plastic packaging on the market in the Netherlands alone.
- 4.4.3 Data on how much plastic packaging is placed on the market by grocery retailers in the US – the region from which Ahold Delhaize derives the majority of its sales – is unavailable.²⁴ However, we note that the US registers the world’s highest per capita plastic waste generation.²⁵
- 4.5 Although the points above incorporate assumptions and extrapolations, they provide an indication of the scale of plastic packaging placed on the market by grocery retailers. Ahold Delhaize has not made any public statements regarding the quantities of plastic packaging it makes available on the market that suggest it performs significantly better than its peers or the sector as a whole in relation to plastic packaging, and we have seen no evidence to suggest that it does. As such, we conclude that the scale at which it makes plastic packaging available on the market is likely to be consistent with this trend.
- 4.6 Below, we set out the adverse impacts of plastic on the environment and explain why plastic packaging in particular is a key driver of these adverse impacts.

5 Significant environmental cost of plastic packaging

- 5.1 Plastics are associated with numerous severe and well-documented impacts on the environment. National environmental agencies around the globe, including those of the European Union (EU)²⁶ and the US²⁷ have identified tackling plastic pollution as a priority issue. The World Economic Forum has described plastics as “causing untold damage to environment and societies” and having resulted in a “drastic plastic pollution problem”.²⁸ This year, the United Nation’s Special Rapporteur on toxics and human rights affirmed that “[t]he whole cycle of plastics, at its various stages, has become a global threat to human rights”.²⁹ Below, we set out an overview of these impacts:

²² Management Report, p.84.

²³ Environmental Investigation Agency and Greenpeace, “Checking out on plastics: A survey of UK supermarkets’ plastic habits”, (2018).

²⁴ Jessica Glenza, “Plastic wrapped in plastic: the wasteful reality of America’s grocery stores”, *The Guardian*, 20 June 2019.

²⁵ Kara Lavender Law, Natalie Starr, Theodore R. Siegler, Jenna R. Jambeck, Nicolas J. Mallos and George H. Leonard, “The United States’ contribution of plastic waste to land and ocean”, *Science Advances*, Vol.6 Issue 44, (2020).

²⁶ Including, for example, the European Environment Agency. See, for example, Environmental Agency, “Plastics, the circular economy and Europe’s environment – A priority for action”, Report No 18, (2020).

²⁷ The United States Environmental Protection Agency has a dedicated programme working on ‘aquatic trash’, in particular, plastic pollution. See: <https://www.epa.gov/trash-free-waters>.

²⁸ World Economic Forum, “Plastics, the Circular Economy and Global Trade”, White Paper, July 2020, pp. 4 – 5.

²⁹ Marcos Orellana, “Report of the Special Rapporteur on the implications for human rights of the environmental sound management and disposal of hazardous substances and wastes: The stages of the plastics cycle and their impacts on human rights”, (2021), A/76/207.

5.1.1 Contribution to climate change

Plastic production and waste are a significant source of greenhouse gas (GHG) emissions. 98% of single-use plastics are made from fossil-fuel feedstock,³⁰ with plastic production currently representing around 9% of oil demand.³¹ In 2019, emissions from plastic production were estimated to be equivalent to that of 189 new 500-megawatt coal-fired power plants.³² The end-of-life phase of plastic also gives rise to emissions, particularly where plastic waste is incinerated,³³ which is the second most common fate of plastic waste after landfill worldwide³⁴ and the first in the Netherlands.³⁵ The carbon intensity of the plastic lifecycle means that plastic packaging can represent a substantial portion of the carbon footprint of consumer goods, particularly in respect of “*lower-value higher-volume goods*”³⁶ – the staple of grocery retail sales.

5.1.2 Plastic waste in the environment

- (i) Plastic waste also poses severe risks to public health and biodiversity. Even where plastic waste is disposed of in formal waste management systems, in addition to GHG emissions, it gives rise to adverse environmental impacts such as toxic air pollution³⁷ and runoff, which can contaminate soil and groundwater.³⁸
- (ii) Significant proportions of plastic waste are not managed in formal waste systems. In Indonesia for example – where Ahold Delhaize brand Super Indo³⁹ is the largest supermarket chain⁴⁰ – 3.2 million tonnes of plastic waste are generated each year that go unmanaged.⁴¹ As a result of the waste trade, plastic waste originating from the US and Europe (the regions where Ahold Delhaize primarily operates) is shipped to countries in the Global South, where widespread practices such as unsanitary landfill, burning and dumping lead to numerous environmental and public health problems. These include clogging of waterways, leading to flooding and creating breeding grounds for waterborne diseases.⁴²

³⁰ Minderoo Foundation, “Plastic Waste Makers Index: Revealing the source of the single-use plastics crisis”, (2021), p. 11

³¹ Carbon Tracker, “The future’s not in plastics: Why plastics demand won’t rescue the oil sector?”. (2020). p. 5.

³² Center for International Environmental Law, “Plastic & Climate: The Hidden Costs of a Plastic Planet”, (2019), p. 11.

³³ Eunomia, “Greenhouse Gas and Air Quality Impacts of Incineration and Landfill: Report to ClientEarth”, (2020).

³⁴ Renee Cho, “More plastic is on the way: What it means for Climate Change”, *State of the Planet: News from the Columbia Climate School*, 20 February 2020.

³⁵ CE Delft, “Plasticgebruik en verwerking van plastic afval in Nederland”, (2019).

³⁶ Federated Hermes, “Investor expectations for global plastics challenges”, (2020).

³⁷ Golwala H et al, ‘Solid waste: An overlooked source of microplastics in the environment’, *Science of the Total Environment*, Vol 769, (2021), 144581.

³⁸ Plastic Atlas, (2019), p. 37.

³⁹ Ahold Delhaize owns a 51% share in Super Indo. See the Management Report, p. 63.

⁴⁰ <https://www.aholddelhaize.com/brands/super-indo/>.

⁴¹ <https://www.unep.org/ietc/resources/policy-and-strategy/national-plastic-waste-reduction-strategic-actions-indonesia>.

⁴² Tearfund, Fauna & Flora International, WasteAid and The Institute of Development Studies, “No Time to Waste: Tackling the plastic pollution crisis before it’s too late”, (2019), p. 5.

- (iii) An estimated 11 million metric tons of plastic enter the oceans each year,⁴³ and around 80% of plastics in the ocean originate from land.⁴⁴ The presence of plastic in the oceans has numerous and severe implications. For example, marine wildlife can become entangled in plastic waste, or ingest it, both of which can be lethal.⁴⁵

5.1.3 Microplastics

- (i) Microplastics are pieces of plastic less than 5mm in diameter.⁴⁶ An estimated 230,000 tonnes of microplastics leak into the environment each year in the form of plastic pellets used to manufacture plastic products (including plastic packaging).⁴⁷ In addition, over time, plastic waste in the environment can break down into microplastics. Microplastics are now ubiquitous in the terrestrial environment, accumulating in soil and freshwater, harming ecosystems, affecting crop yields and entering the food chain.⁴⁸ This is particularly problematic as they have been found to act as vectors for toxic chemicals.⁴⁹
- (ii) The irreversibility and ubiquity of microplastics have led scientists to argue that it meets the essential conditions for a “*planetary boundary threat*” – which means that it could alter “*the normal functioning of Earth-system processes in ways that amplify risks to societies world-wide*”.⁵⁰

5.2 As set out above, and as recognised by leading international institutions and governments around the globe, plastic production and pollution causes a number of evidenced adverse impacts on the environment and public health, and is associated with further potential impacts. Each of these is severe in its own right, and collectively, they represent a serious and urgent issue of global concern.

⁴³ The Pew Charitable Trusts and SYSTEMIQ, “Breaking the Plastic Wave: A comprehensive assessment of pathways towards stopping ocean plastic pollution” (2020), p. 14.

⁴⁴ Eunomia, “Plastics in the Marine Environment”, (2016), p. 4.

⁴⁵ Susanne Kühn, Jan Andries van Franeker, “Quantitative overview of marine debris ingested by marine megafauna”, Marine Pollution Bulletin, Vol. 151, (2021), 110858

⁴⁶ <https://www.europarl.europa.eu/news/en/headlines/society/20181116STO19217/microplastics-sources-effects-and-solutions>.

⁴⁷ <https://reports.eia-international.org/a-new-global-treaty/eu-and-uk-policy/>.

⁴⁸ Laura Parker, “Microplastics have moved into virtually every crevice on Earth”, *National Geographic*, 7 August 2020.

⁴⁹ Andrew Wirnkor Verl, Christian Eberé Enyoh, Evelyn Ngozi Verla, Kieran Oharley Nwarnorh, “Microplastic-toxic chemical interaction: a review study on quantified levels, mechanism and implication”, *SN Applied Sciences*, 1:400, (2019).

⁵⁰ Patricia Villarrubia-Gómez, Sarah E. Cornell, Joan Fabres, “Marine plastic pollution as a planetary boundary threat – The drifting piece in the sustainability puzzle”, *Marine Policy*, Volume 96, (2018), pp. 213 – 220. In 2021, researchers concluded that “*weathering plastics meet all three criteria of a planetary boundary threat for novel entities*” (which include 1) planetary-scale exposure which 2) is not readily reversible, and which 3) elicits a disruptive impact on vital earth systems). Hans Pter H. Arp, Dana Kühnel, Christoph Rummel, Matthew MacLeod, Annegret Potthoff, Sophia Reichelt, Elisa Rojo-Nieto, Mechthild Schmitt-Jansen, Johanna Sonnenberg, Erik Toorman and Annika Jahnkw, “Weathering plastics as a planetary boundary threat: exposure, fate and hazards”, *Environmental Science and Technology*, 55, 7246-7255, (2021).

5.3 Plastic packaging can be singled-out as a key contributor to these impacts for the following reasons:

- (i) Packaging is the largest single application of plastics.⁵¹ Since much of it is used just once and then thrown away, it makes up an even greater proportion of plastic waste.⁵²
- (ii) Flexible plastic packaging,⁵³ which makes up around a quarter of all consumer packaging,⁵⁴ is particularly problematic. It is very challenging to recycle, so disproportionately likely to end up in landfill⁵⁵ or the environment – 80% of plastic that enters the oceans is flexible and multilayer plastics.⁵⁶ Flexible plastic is also particularly lethal to marine life, found to be responsible for most of the deaths of marine megafauna caused by plastic.⁵⁷

Global plastic production by industry

in millions of tonnes



Source: nationalgeographic.com/science/article/plastics-facts-infographics-ocean-pollution

⁵¹ Parker, “Fast facts about plastic pollution”, *National Geographic*, (2018).

⁵² ING, “Plastic packaging in the food sector”, (2019), p. 5.

6 Conclusion

- 6.1 Ahold Delhaize is one of the world's largest grocery retailers, a sector that is widely understood to be one of the main sources of what has been termed as the “*plastic crisis*”.
- 6.2 From the evidence provided above, it is clear that our assumption that Ahold Delhaize makes a significant amount of plastic packaging available on the market is well-justified. As we have also demonstrated, the impacts on the environment and public health of these quantities of plastic packaging are multiple and severe.

Part II

Overview of relevant reporting obligations and breaches

7 Applicable law and guidance to its interpretation

- 7.1 Ahold Delhaize falls under the scope of Article 391(1) of Book 2 of the Dutch Civil Code as further elaborated in the Decree on disclosure of non-financial information (the **Decree**)⁵⁸ which transposes the provisions of Directive 2014/95 (the **Non-Financial Reporting Directive**).⁵⁹ In overview, these instruments require Ahold Delhaize to include a non-financial statement in its annually published management reports in which it discloses information on the impacts it has on the environment, and the risks it faces related to these impacts.
- 7.2 Article 2(1) of the Decree provides that companies and groups of companies that fall under the scope of Article 1(1) (referred to generally in this Notification as ‘issuers’) must include a non-financial statement in their annually-published management reports. Articles 2 and 3 of the Decree set out requirements regarding the subject matter and content of the non-financial statement.
- 7.3 The European Commission has produced two sets of non-binding guidance on the interpretation of the Non-Financial Reporting Directive. The first – the Guidelines on non-financial reporting (methodology for reporting non-financial information) (the **Guidelines**) – was published in 2017.⁶⁰ The second – the Supplement on reporting climate-related information (the **Supplement**) – was published in 2019.⁶¹ Although the Supplement addresses the disclosure of climate-related information, its guidance is relevant and applicable to the interpretation to the Non-Financial

⁵³ I.e. non-rigid plastic packaging, such as wrappers, packets, bags, pouches and film.

⁵⁴ Flexible packaging makes up a significant amount of overall packaging – 25% in the UK, for example. See: <https://wrap.org.uk/taking-action/plastic-packaging>.

⁵⁵ Edie, “Manufacturing giants united on £1 Flexible Packaging Fund”, 27 May 2021.

⁵⁶ Pew Charitable Trusts, “Breaking the plastic wave”, (2020), Figure 29, p. 63

⁵⁷ Over 700 species are known to ingest plastic and as little as one piece of ingested plastic can cause death. Flexible, film-like plastic is one of the most lethal to marine wildlife. Lauren Roman, Qamar Schuyler, Chris Wilcox, Britta Denise Hardesty, “Plastic pollution is killing marine megafauna, but how do we prioritize policies to reduce mortality?”, *Conservation Letters*, Vol. 14, Issue 2, (2020).

⁵⁸ [Besluit bekendmaking niet-financiële informatie](#).

⁵⁹ [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 groups

⁶⁰ Communication from the Commission – Guidelines on non-financial reporting (methodology for reporting non-financial information), [C/2017/4234](#).

⁶¹ Communication from the Commission – Guidelines on non-financial reporting: Supplement on reporting climate-related information, [C/2019/4490](#).

Reporting Directive generally, and in particular, to the reporting of environmental non-financial information.

- 7.4 In the absence of binding guidance and case law on the interpretation of the Decree and the Non-Financial Reporting Directive, the Guidelines, the Supplement and the Recitals to the Non-Financial Reporting Directive (the **Recitals**) are the most authoritative sources for interpreting its provisions. The Recitals, the Guidelines and the Supplement are collectively referred to as the **Sources of Interpretation** in the remainder of this Notification.
- 7.5 In order to provide examples of good practice in complying with specific elements of the relevant reporting requirements, we refer to the non-financial statements of other issuers that fall under the scope of the Non-Financial Reporting Directive. These issuers were chosen on the basis that plastic packaging plays a similarly key role in their business model, and the examples of reporting selected relate to the topic of plastic packaging.

8 Relevant reporting requirements

- 8.1 Article 1(3) of the Non-Financial Reporting Directive provides that groups that fall under its scope must:

“include in the management report a non-financial statement containing to the extent necessary for an understanding of the group’s development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including:

- (a) a brief description of the group’s business model;*
- (b) a description of the policies pursued by the group in relation to those matters, including due diligence processes implemented;*
- (c) the outcome of those policies;*
- (d) the principal risks related to those matters linked to the group’s operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the group manages those risks;*
- (e) non-financial key performance indicators relevant to the particular business.*

Where the group does not pursue policies in relation to one of more of those matters, the non-financial statement shall provide a clear and reasoned explanation for not doing so.”

(For ease of reference, we refer to the requirements set out in Article 1(3) collectively as the **Reporting Requirements** in the remainder of this Notification.)

9 Double materiality perspective

- 9.1 The Reporting Requirements establish a threshold for the information to be provided by companies – it must be sufficient *“for an understanding of the undertaking’s development, performance, position and impact of its activity”*.

- 9.2 This threshold applies to the non-financial statement as a whole, and as such, must be met as regards:
- (i) the individual topics to be covered in relation to the subject areas listed in the Reporting Requirements (i.e. environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters (each a **Subject Area**); and
 - (ii) the information provided in relation to those topics.
- 9.3 The Guidelines describe this threshold as “*materiality*”.⁶² In the context of the Reporting Requirements, *materiality* is understood to have two perspectives:
- (i) the reference to “*the undertaking’s development, performance [and] position*” indicates a **financial perspective**, “*in the broad sense of affecting the value of the company*”; and
 - (ii) the reference to “*the impact of [the undertaking’s] activity*” indicates an **environmental or social perspective**.⁶³ (emphasis added)
- 9.4 The Reporting Requirements therefore have what is known as a “*double materiality perspective*”.⁶⁴ As explained in the Supplement, this means that issuers must report *material* information on topics that are *material* from either a financial or an environmental/social perspective within each of the Subject Areas.⁶⁵
- 9.5 This obligation to provide material information on material topics in each of the Subject Areas underpins the Reporting Requirements as a whole, and as such, for ease of reference, we refer to it as the **Overarching Obligation** in the remainder of this Notification.

10 Material information – core categories

- 10.1 In addition to the Overarching Obligation, the Reporting Requirements oblige issuers to cover certain categories of information in their non-financial statements. These categories of information are set out in sub-Articles 1(3)(a) to 1(3)(e), and further explained below.
- 10.1.3 Sub-Article 1(3)(a) requires issuers to provide a brief description of the business model in order to “*provide context for the management report as a whole... In more simple terms, what a company does, how and why it does it*”, including “*how it transforms inputs into outputs through its business activities*”.⁶⁶ This is effectively a standalone obligation, intended to contextualise the remainder of the non-financial statement.

⁶² Guidelines, Section 3.1.

⁶³ Supplementm Section 2.2: “[t]he reference to a company’s ‘development, performance [and] position indicates **financial materiality**, in the broad sense of affecting the value of the company”, whereas, “[t]he reference to ‘impact of [the company’s activities] indicates **environmental and social materiality**.” (emphasis added)

⁶⁴ Supplement, Figure 1.

⁶⁵ Supplement, Section 2.2.

⁶⁶ Guidelines, Section 4.1.

10.1.4 Sub-Articles 1(3)(b) – (d) contain the core categories of information that issuers must cover in their disclosures in respect of each of the Subject Areas. In summary, they provide that issuers must disclose:

- (i) a **description of the policies** pursued by the issuer in relation to each Subject Area and **due diligence processes** implemented in relation to those policies;
- (ii) the **outcome of those policies**; and
- (iii) the principal financial and other risks related to that Subject Area linked to the group’s operations (i.e. risks of an **adverse impact on the environment**, and **risks to the issuers business**) and **how the group manages those risks**.

(The categories of information described in (i) – (iii) are referred to collectively as **Core Categories** in the remainder of this Notification.)

10.1.5 Sub-Article 1(3) requires issuers to provide non-financial key performance indicators (KPIs) relevant to the business. The Guidelines and the Supplement make clear that KPIs should be used throughout the non-financial statement to support and explain the disclosures that correspond with the other categories of information, in particular the Core Categories.⁶⁷

10.2 The requirement to disclose information relating to each of the Core Categories with the support of relevant KPIs links directly back to the overarching obligation of the Reporting Requirements – that issuers must provide sufficient information for readers to understand their “*development, performance, position and impact*”.

10.3 Although the Reporting Requirements do not explicitly state that issuers must disclose information corresponding with all the Core Categories for each topic identified as *material*, where a specific topic is *material* to an issuer, it is unlikely they will be able to meet the Overarching Obligation without doing so.

11 Breach 1 – failure to acknowledge *financial materiality* of plastic packaging and to disclose related risks to the business

11.1 In the Management Report, Ahold Delhaize provides three lists of *material* topics:⁶⁸

- (i) the first of these is entitled “*Principal risks*”, which it describes as “[t]opics that have a **material impact on our current strategic, operations, financial and compliance objectives**”;
- (ii) the second is entitled “*Intersecting topics*” (i.e. “[t]opics that have a material impact... **both from an ESG and financial points of view**”); and
- (iii) the third is entitled “*Material ESG impacts*”, which it describes as “[t]opics that have a **material impact on our current business objectives from an ESG point of view, but not yet from a material financial impact point of view**”.

(emphasis added).

⁶⁷ Supplement, Section 4.5. See also the Guidelines, Section 3.5.

⁶⁸ Management Report, p. 37.

- 11.2 Ahold Delhaize includes the topic of “*sustainable packaging*” (by which, as we explain below, we consider it is referring principally to plastic packaging), on the third list (“*Material ESG impacts*”). By doing so, Ahold Delhaize is identifying that the topic of plastic packaging is *material* to the group from an environmental perspective.⁶⁹
- 11.3 However, by including the topic on the third list and not the second (“*Intersecting topics*”) or first list, Ahold Delhaize is in effect stating that the topic of plastic packaging is not *material* to the group from a financial perspective. Moreover, Ahold Delhaize does not disclose any information in the Management Report regarding financial risks to its business linked to the topic of plastic packaging.
- 11.4 As we explain in Part III of this Notification, Ahold Delhaize faces a number of risks linked to the topic of plastic packaging and these risks qualify as *financially material* in accordance with the Reporting Requirements. In addition to (and presumably, as a result of) Ahold Delhaize’s incorrect identification of the topic of plastic packaging as not being *financially material* to the group, it has not disclosed any information regarding the financial risks to the Group relating to plastic packaging.
- 11.5 By stating the topic is not *financially material* and not disclosing information regarding the financial risks to the group relating to the topic, Ahold Delhaize is failing to disclose *material* information on a *material* topic. Ahold Delhaize has therefore not met the threshold of providing sufficient information for a reader to understand the “*development, performance [and] position*” of the group, and this is a breach of the Reporting Requirements. We refer to this as **Breach 1** in the remainder of this Notification.

12 Breach 2 – failure to provide material information on the impacts of plastic packaging on the environment

- 12.1 In addition to Ahold Delhaize’s failure to disclose information regarding the financial risks that the group faces in relation to plastic packaging, the Group fails disclose *material* information regarding the environmental impacts of plastic packaging, despite acknowledging that the topic is *environmentally material* (see Paragraph 11.2).
- 12.2 This can be demonstrated by reference to comparing the Group’s disclosures on plastic packaging against the disclosure requirements relating to each of the Core Categories: in each case, Ahold Delhaize’s disclosures do not correspond with the level of information issuers are required to disclose in relation to the Core Categories. Moreover, the scant information that it does provide on the topic of plastic packaging is not supported by relevant KPIs.
- 12.3 As such, in addition to failing to provide sufficient information for a reader to understand the “*development, performance and position*” of the group (Breach 1), Ahold Delhaize has also breached the overarching obligation in the Reporting Requirements to provide sufficient information for a reader to understand the “*impact*” of the group. We refer to this as **Breach 2** in the remainder of this Notification.

⁶⁹ References to the topic of “*sustainable packaging*” made elsewhere in the Management Report relate almost exclusively to plastic packaging. As such, we conclude that Ahold Delhaize identifies the topic of plastic packaging as being *environmentally material* in the Management Report.

Part III

Breach 1 – failure to disclose information sufficient for an understanding of Ahold Delhaize’s “*development, performance [and] position*”

13 Overview

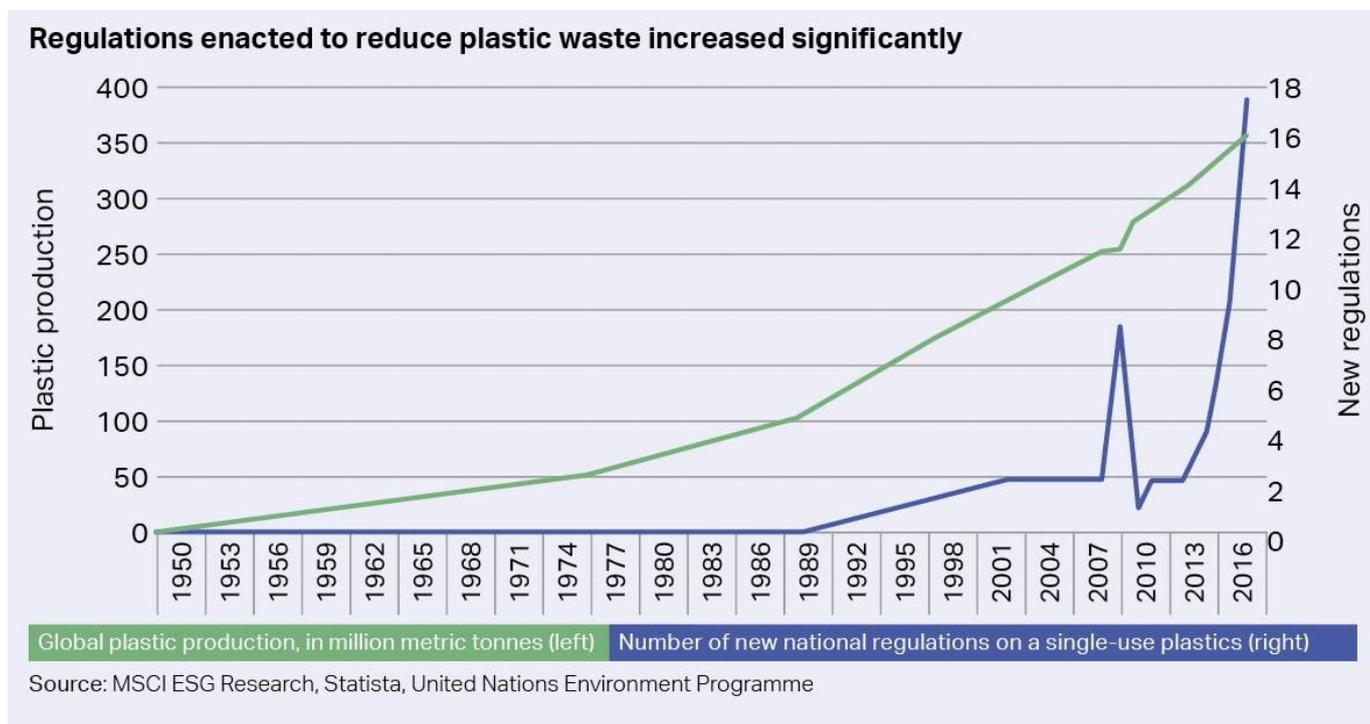
- 13.1 As noted in Paragraph 11.3, in the Management Report, Ahold Delhaize does not identify the topic of plastic packaging as being *material* to the Group from a financial perspective.
- 13.2 In Part III of this Notification, we provide an overview of the financial risks that Ahold Delhaize faces linked to the topic of plastic packaging. We then demonstrate that collectively, these financial risks are *financially material* to Ahold Delhaize pursuant to the Reporting Requirements, and that, consequently, Ahold Delhaize has breached the Reporting Requirements by not identifying it as such in the Management Report.

14 The main financial risks Ahold Delhaize faces in relation to plastic packaging

- 14.1 As awareness of the severity and urgency of plastic pollution builds, along with accumulating pressure to abate the emissions associated with single-use plastics, companies such as Ahold Delhaize face a number of risks that could have financial consequences for its business. These include:
- (i) rapidly changing regulatory frameworks on single-use plastics in its main markets;
 - (ii) reputational damage arising from consumer concerns on the environmental and health impacts of plastic packaging;
 - (iii) uncertain market dynamics affecting actors upstream in the plastics supply chain, which could increase the cost of plastic packaging; and
 - (iv) increasing frequency of lawsuits and other type of legal action for heavy users of single-use packaging.

Below, we describe how each of these categories of transition and liability risks is likely to affect Ahold Delhaize.

14.2 A rapidly changing regulatory framework on single-use plastics in Ahold Delhaize’s main markets



Regulatory risk in the EU

14.2.1 Ahold Delhaize is headquartered in the EU and generated approximately 40% of its revenue from this region in the 2020 financial year.⁷⁰ The regulatory regime on plastic packaging and waste in the EU is changing rapidly, with multiple policy initiatives setting out measures that will affect users of single-use packaging that operate there, including Ahold Delhaize.⁷¹

14.2.2 One of the related legislative proposals – the Single-Use Plastics Directive – has already been adopted. Among other measures, it mandates the introduction of ‘extended producer responsibility’ (EPR) schemes in relation to a number of common types of single-use plastic packaging. The EPR obligations will require companies placing single-use plastic packaging on the market to meet the end-of-life costs associated with it (e.g. waste collection, transportation, treatment, litter clean-up and even warning the public of the detrimental effects their products have on the environment) and will apply from January 2023.⁷²

14.2.3 The costs of meeting EPR obligations are likely to be significant. The Consumer Goods Forum estimates the cost of operating “a robust collection and recycling system across the world” to be up to US\$ 130 billion – representing around 3% of the combined industry

⁷⁰ Management Report, p. 11. We note that these figures include Ahold Delhaize’s operations in Serbia, which is not yet an EU Member State. However, the Management Report does not disclose how much revenue Ahold Delhaize derived from its Serbian operations in the 2020 financial year.

⁷¹ These include: European Commission: A European Strategy for Plastics in a Circular Economy (2018) [COM/2018/028 final](#); The European Green Deal, (2019), [COM/2019/640 final](#); The Circular Economy Action Plan (2020), [COM/2020/98 final](#).

⁷² Single-Use Plastics Directive, Article 8.

revenue for producers of fast moving consumer goods.⁷³ In addition to direct costs, companies will face costs associated with measuring and evaluating packaging handled.

14.2.4 Reforms to packaging and waste legislation that impose obligations on Member States have also been adopted. These require Member States to achieve certain outcomes, such as establishing re-use systems,⁷⁴ increasing the proportion of plastic waste that is recycled,⁷⁵ and reducing the quantity of plastic waste sent to landfill,⁷⁶ leaving the design of the legislation and initiatives to achieve this up to national governments.

14.2.5 By way of example, in October this year, the French government announced a ban on plastic packaging for some fruit and vegetables effective from 1 January 2022. The measure is predicted to result in the elimination of one billion items of plastic packaging.⁷⁷ Although Ahold Delhaize does not have operations in France, the introduction of this ban demonstrates how quickly the legislative landscape is changing, with other Member States and European countries likely to follow suit. For instance, the Spanish government is already working on a draft decree containing similar measures.⁷⁸

Regulatory risk in the US

14.2.6 Ahold Delhaize generates over half of its net sales from the US market,⁷⁹ where there is also unprecedented legislative activity at both state and federal level on the topic of plastics and plastic pollution.

14.2.7 At state level, regulatory risk is already manifesting. For example, the US state of Maine (home to Ahold Delhaize's Hannaford brand⁸⁰) recently signed an EPR bill into law that will require grocery retailers to pay designated end-of-life costs relating to its own brand packaging. Several other states where Ahold Delhaize brands operate are set to follow suit, including Maryland,⁸¹ Massachusetts⁸² and New York.⁸³

14.2.8 There is also considerable activity at the federal level, with an ambitious bill having been introduced in Congress – the Break Free From Plastic Pollution Act,⁸⁴ along with proposals for several other measures targeting other actors in the plastics value chain including a tax on virgin plastics.⁸⁵ These federal initiatives are still at an early stage, but the accumulation

⁷³ The Consumer Goods Forum, "Consumer Packaging Waste Management: A Blueprint", (2019), p. 6.

⁷⁴ Directive (EU) 2018/852 of the European Parliament and of the Council amending Directive 94/62/EC on packaging and packaging waste (Packaging and Packaging Waste Directive), Article 5(1).

⁷⁵ Packaging and Packaging Waste Directive, Article 5(a)(g)(i).

⁷⁶ Directive (EU) 2018/850 of the European Parliament and of the Council of 30 May 2018 amending Directive 1999/31/EC on the landfill of waste.

⁷⁷ Ministère de la Transition Écologique, Lutte contre la pollution plastique : publication du décret encadrant l'interdiction des emballages plastique autour des fruits et légumes frais, 11 October 2021

⁷⁸ Manuel Planelles, "Spain to ban sale of fruit and vegetables in plastic wrapping from 2023", *El País*, 22 September 2021.

⁷⁹ Management Report, p. 11.

⁸⁰ <https://www.aholddelhaize.com/brands/hannaford/>.

⁸¹ An Act Concerning Environment – Packaging, Containers, and Paper Products – Producer Responsibility, Md. Gen. Assembly, House Bill 36, 442nd session, (2021).

⁸² An Act to Save Recycling Costs in the Commonwealth, Mass. Legislature, Bill S.610/H.878, 192nd session (2021).

⁸³ Extended Producer Responsibility Act, N.Y. Senate, Senate Bill S1185C, (2021).

⁸⁴ Break Free From Plastic Pollution Act of 2020, H.R. 5845, 116th Cong., (2020).

⁸⁵ A bill to tax virgin plastics is in committee. S.2645: REDUCE Act of 2021.

of bills on the topic of plastics is a clear indicator of increased future regulation on plastics in the US.

14.3 Reputational damage arising from consumer concerns on the environmental and health impacts of plastic packaging

14.3.1 The global campaign against plastic waste has been described as “*one of the fastest growing environmental causes ever mounted*”.⁸⁶ 87% of citizens in the EU are worried about the impact of plastics on the environment.⁸⁷ In a separate poll, 62% of Europeans identified as either “*extremely*” or “*very*” engaged in reducing plastic consumption.⁸⁸ The majority of US consumers describe themselves as “*highly concerned*” about the environmental impact of packaging.⁸⁹

14.3.2 As noted by management consultant McKinsey, sustainability issues are growing increasingly prominent across all groups of shoppers. Of all demographics, millennials register the highest level of concern for sustainability regarding their purchasing choices, and this age-group is now officially the most financially powerful.⁹⁰ In light of the particularly high level of public concern over plastic pollution, commentators such as the United Nations Principles for Responsible Investment Initiative (the PRI) have cautioned that brand value could be severely impacted by association with plastic pollution.⁹¹

14.3.3 Increasing evidence of – and concern regarding – the effect of hazardous chemicals on consumer health is another source of reputational risk. The European Bureau of Consumer Unions has reported that “*fears over hazards in consumer products*” have risen “*dramatically*” in recent years.⁹² Indeed, an EU survey found that 74% of EU citizens are worried about the impact of plastic products on their health.⁹³ Such concern is likely to affect grocery retailers more than other actors in the supply chain due to their proximity to the consumer. These are companies in which there are high expectations regarding safety, and incidents linked to food safety in the past have had “*severe effects on the food industry*”.⁹⁴

14.3.4 This translates into financial risks for the grocery retail sector as a whole, and for individual companies or brands that are perceived to perform worse than their competitors. For example, the grocery retail model is likely to face increased competition from plastic-free

⁸⁶ Laura Parker, “Plastic pollution is a huge problem – and it’s not too late to fix it”, *National Geographic*, 6 October 2020.

⁸⁷ https://ec.europa.eu/commission/presscorner/detail/fi/MEMO_18_6.

⁸⁸ Walter Leal Filho, Amanda Lange Salvia, Alessandra Bonoli, Ulla A. Saari, Viktoria Voronova, Sonali Suraj Kumbhar, Katarina Olszewski, Daniela Müller de Quevedo, Jelena Barbir, “An assessment of attitudes towards plastics and bioplastics in Europe”, *Science of the Total Environment*, Vol. 755, Part 1, (2021).

⁸⁹ <https://www.mckinsey.com/industries/paper-forest-products-and-packaging/our-insights/sustainability-in-packaging-inside-the-minds-of-us-consumers>.

⁹⁰ <https://www.mckinsey.com/industries/retail/our-insights/prioritizing-sustainability-in-the-consumer-sector>.

⁹¹ Principles for Responsible Investment, “The Plastics Landscape: Risks and opportunities along the value chain”, (2019), p.13.

⁹² <https://www.icis.com/explore/resources/news/2021/04/28/10633477/european-consumer-fears-grow-over-chemicals-trade-group>.

⁹³ Special Eurobarometer 468, Attitudes of European citizens towards the environment.

⁹⁴ “... trust is essential in the food industry and, hence, in the retail food market – with food retailers being the primary trading partner in food buyer-sell relationships”. Linn Viktoria Rampl, Tim Eberhardt, Reinhard Schütte and Peter Kenning, “Consumer trust in food retailers: conceptual framework and empirical evidence”, *International Journal of Retail & Distribution Management*, Vol. 40 No. 4, (2012).

and low-waste start-ups, and within the sector, Ahold Delhaize could lose out on sales to existing competitors who act more quickly and effectively to reduce their plastic footprint and offer customers plastic-free and low-waste alternatives.

14.4 Uncertain market dynamics affecting actors upstream in the plastics supply chain, which could increase the cost of plastic packaging

- 14.4.1 Packaging costs can represent up to 14% of the costs of goods sold.⁹⁵ For businesses that have a high dependence on plastic packaging, including Ahold Delhaize, increases in the costs of packaging materials could potentially impact profitability. For example, in its 2020 universal registration document, French consumer goods multinational, Danone, identifies plastics as one of the main commodity prices to which it is exposed.⁹⁶ Companies such as Ahold Delhaize are therefore exposed to risks facing other actors on the plastics supply chain that may impact the price of plastic packaging.
- 14.4.2 The first of these relates to a new levy on unrecycled waste in the EU. As of January this year, Member States are obliged to pay €0.80 per kilo on unrecycled plastic waste into the EU budget. Most Member States are expected to implement taxes internally to recoup the amounts paid out at a national level. The companies that are most likely to be hit by such taxes include those that manufacture plastic packaging and/or the corporate users of plastic packaging, which would include grocery retailers.
- 14.4.3 The impacts of plastic packaging taxes could be significant for Ahold Delhaize, even if the tax does not directly target grocery retailers in favour of actors further up the corporate supply chain. Market specialists Wood Mackenzie and IHS Markit have predicted that plastic packaging manufacturers will be targeted with taxes, and the latter estimates that this will result in the price of plastic packaging increasing by between 20 and 60% as a result.^{97 98}
- 14.4.4 As we explain below, one of Ahold Delhaize's targets related to plastic packaging is to increase recycled content. However, due to a proliferation of such targets and commitments across the sector, and challenges linked to producing food-grade recycled plastic, the cost of recycled plastic is also likely to increase, especially for the food sector.⁹⁹ FMCG Unilever, for instance, states in its 2020 annual report that "*high demand*" could result in the "*cost of recycled plastic or other alternative materials... significantly increas[ing] in the foreseeable future*", predicting that this could impact "*business performance*".¹⁰⁰
- 14.4.5 In the longer term, regulatory measures designed to mitigate climate change are likely to result in increased exposure of heavy users of single-use plastics to costs associated with

⁹⁵ Federated Hermes, "Investor expectations for global plastics challenges", (2020).

⁹⁶ Danone Universal Registration Document: Annual Financial Report, (2020), p.82.

⁹⁷ <https://www.woodmac.com/news/opinion/how-will-the-eu-plastics-levy-change-the-flexible-packaging-market/>.

⁹⁸ <https://ihsmarkit.com/research-analysis/plastic-tax-in-europe.html>.

⁹⁹ See Tom Hesselink and Emiel van Duuren, "The green deal: a game changer for the waste management and plastics industries", KPMG in the Netherlands, (2021), p. 15 "... several industry participants anticipate shortages of high-quality recycled plastic."

¹⁰⁰ Unilever Annual Report and Accounts, (2020), p. 47.

its embedded carbon.¹⁰¹ ¹⁰² Moreover, since the vast majority of plastic is produced from by-products of oil and gas, as extraction of fossil fuels for energy and transportation declines, plastic production will bear more of the upstream costs. This is likely to “*fundamentally affect the long-term economic prospects of the plastics industry*”.¹⁰³ Added to this, nearly 200 countries agreed to a pledge to reduce subsidies for fossil fuels at the COP26 climate summit.¹⁰⁴ In time, measures such as this will result in significant cost increases for the industry, which is likely to feed into higher costs for packaging material.

14.5 Increasing frequency of lawsuits and other type of legal action for heavy users of single-use packaging

14.5.1 Companies involved in plastic production, or whose business models involve intense use of plastics, are facing increased risk of legal action on the topic. As well as being costly for the companies involved, and potentially leading to jurisprudence limiting their future activities, cases such as these can achieve widespread media coverage and escalate reputational risks.

14.5.2 In 2020, NGO Earth Island Institute launched a first-of-a-kind lawsuit against ten major food and drink manufacturing companies for their role in plastic pollution, which is currently making its way through the courts in California. This case has been followed by several lawsuits relating to claims made by companies regarding attributes of plastic packaging. One of Ahold Delhaize’s key competitors in its US market, Walmart Inc., recently faced a lawsuit relating to claims made by the company on the recyclability of packaging.¹⁰⁵ The Coca Cola Company is facing allegations regarding recyclability claims,¹⁰⁶ along with a separate lawsuit for marketing itself as a ‘sustainable’ company.¹⁰⁷

14.5.3 Plastic producers are also facing legal challenges to expansion plans. In the US, Taiwanese plastics company Formosa has fought multiple legal battles in seeking to secure the construction of a plastic production plant in the state of Louisiana.¹⁰⁸ In Belgium, petrochemicals company INEOS has faced a challenge in the courts regarding expansion plans for its petrochemicals complex in the Port of Antwerp.¹⁰⁹ Significantly, these claims integrated evidence on the climate impacts of the production facilities themselves, as well as the negative effects that the products produced would have on the environment.¹¹⁰

¹⁰¹ Federated Hermes, “Investor expectations for global plastics challenges”, (2020).

¹⁰² For example, to date, the European petrochemicals industry has benefitted from free allowances under the EU Emissions Trading System, which will be reduced under the European Commission’s current proposal for EU ETS, with potential for further, even more significant changes in the coming years. [COM\(2021\) 551 final](#).

¹⁰³ CIEL, “[Fueling Plastics: Untested assumptions and unanswered questions in the plastics boom](#)”, (2018), p.2.

¹⁰⁴ “[COP26: How much is spent supporting fossil fuels and green energy](#)”, *BBC News*, 15 November 2021.

¹⁰⁵ *Greenpeace Inc. v Walmart*, No. RG-2008-2964, Alameda Cty. Sup. Ct. The case was dismissed on the basis that the plaintiff, Greenpeace Inc., lacked standing (see: <https://www.greenpeace.org/usa/news/court-dismisses-greenpeaces-suit-against-walmart-without-considering-claims/>).

¹⁰⁶ *Sierra Club v. The Coca-Cola Co. et al.*, No. 3:2021cv04644, N.D. Cal. (pending).

¹⁰⁷ *Earth Island Institute v The Coca-Cola Company*, 2021, CA 001846 B.

¹⁰⁸ Janet McConnaughey, “[Environmental groups challenge plastics complex permit](#)”, *abc News*, 15 January 2020.

¹⁰⁹ <https://www.clientearth.org/latest/press-office/press/major-ineos-plastics-refinery-faces-delays-after-legal-action/>.

¹¹⁰ Formosa’s ‘Sunshine Project’ in Louisiana would produce emissions equivalent to an additional 2.6 million cars on the road each year according to estimates. Benjamin Storrow, “[Plastics plants are poised to be the next big carbon superpolluters](#)”, *Scientific American*, 24 January 2020.

14.5.4 These cases demonstrate an emergent trend of plastic-related litigation. In addition to the risk that Ahold Delhaize may face legal claims relating to plastic packaging in the future (which may be expensive to defend, result in financial penalties/damages and associated business and compliance costs), such lawsuits and the publicity around them reinforce both messages about the environmental effects of plastic packaging and the corporate actors responsible for them.

15 Conclusion

15.1 The evidence set out above demonstrates that Ahold Delhaize faces numerous risks linked to plastic packaging. These risks can be summarised as follows:

- (i) Fast-paced regulatory changes related to plastics in Ahold Delhaize's key regions will expose companies such as Ahold Delhaize to increased operating costs.
- (ii) Plastic-related reputational harm is likely to lead to the erosion of market share in favour of competitors acting more ambitiously on plastics and increased competition from plastic-free/low waste start-ups.
- (iii) Companies with a high degree of dependence on plastic packaging to carry out their business activities are likely to face increases to the price of plastic packaging arising from market dynamics and measures affecting companies further up the supply chain.
- (iv) Legal action on plastic packaging is likely to further exacerbate reputational harm, as well as lead to direct financial penalties, litigation and compliance costs.

15.2 The ease with which companies are able to respond to such risks is also relevant to how likely they are to have a financial impact on the company – the less well prepared they are, the more severe the financial consequences will be.

15.3 In this regard we note that the prevalence of plastic packaging in the typical grocery retail business model (as evidenced in Part I above), means that mitigating such risks would inevitably involve fundamental changes to operating processes within the business, including research and design, adapting technological processes and identifying new suppliers.

15.4 Due to the particular characteristics of the grocery retail sector, we contend that there is a strong degree of likelihood that the risks listed above could lead to financial consequences for the company. First, “*cut-throat competition*” in the sector,¹¹¹ coupled with pressure to keep prices low to attract and maintain customers, means that simply passing price inflation onto consumers is not always possible. For example, in relation to the potential increase in costs associated with the EU plastics levy described in Paragraph 14.4.2, IHS Markit notes that consumers will be “*unlikely to accept*” meeting additional costs.¹¹² Given that the grocery sector is known to have “*wafer thin margins*”,¹¹³ absorbing them could be equally problematic for affected retailers, such as Ahold Delhaize.

15.5 Loss of brand value is a heightened risk for grocery retailers compared with companies

¹¹¹ Jonathan Eley, “Why UK supermarkets are not making super profits”, *Financial Times*, 2 July 2020.

¹¹² <https://ihsmarkit.com/research-analysis/plastic-tax-in-europe.html>.

¹¹³ “Why UK supermarkets are not making super profits”, *Financial Times*, (2020).

operating in other sectors. In the Management Report, Ahold Delhaize itself recognises the direct link between reputational harm and financial loss, categorising risk severity in terms of the potential scale of “*reduction of global or local brand reputation and/or monetary loss*”.¹¹⁴

16 Determining materiality of financial risks for the purposes of the Reporting Requirements

16.1 In Part II of this Notification, we explained that the Overarching Obligation – to provide the information necessary for an understanding of the *development, performance, position and impact of the company* – could be summarised as a requirement to disclose *material* information on *material* topics within the Subject Areas, where:

- (i) *material* is understood to have two perspectives, environmental and financial (the ‘*double materiality*’ perspective); and
- (ii) issuers are obliged to report on topics that are *material* from either of these perspectives.

16.2 Below, we demonstrate that the financial risks that Ahold Delhaize faces relating to the topic of plastic packaging are *financially material* to the group for the purposes of the Reporting Requirements with reference to key factors identified in the Sources of Interpretation as relevant to determining *materiality* and, in particular, *financial materiality*. These can be summarised as follows:

- (i) the obligation to take into account the interests, expectations and concerns of investors and other stakeholders in determining materiality, and the particular relevance of those of investors in relation to *financial materiality*;
- (ii) the obligation to factor-in risks that may materialise over longer-term time horizons than those traditionally used for financial reporting; and
- (iii) the obligation to consider the wider supply chain and issues affecting the sector as a whole.

As we demonstrate below, consideration of all these factors leads to the conclusion that the topic of plastic packaging is *financially material*.

16.3 Investor perceptions of materiality of plastic-related risk

16.3.1 The Non-Financial Reporting Directive is primarily intended as a means of improving the flow of information on sustainability-related matters from companies to stakeholders.¹¹⁵ For this reason, and as affirmed in the Guidelines, the “*expectations, ... interests and concerns*” of stakeholders are a relevant consideration when assessing the *materiality* of information.¹¹⁶

¹¹⁴ Management Report, p. 38.

¹¹⁵ Recital 1: “... *the Commission identified the need to raise to a similarly high level across all Member States the transparency of the social and environmental information provided by undertakings in all sectors*”. Recital 3 also makes reference to “*the needs of investors and other stakeholders as well as the need to provide consumers with easy access to information on the impact of businesses on society*”.

¹¹⁶ Guidelines, 3.1.

- 16.3.2 Investors are singled out as a key group of stakeholders in the Recitals, the Guidelines¹¹⁷ and the Supplement.¹¹⁸ Indeed, in the Supplement, investors are specifically identified as the “*primary audience*” for *financially material* information.¹¹⁹ The perceptions of the investor community on the materiality of plastic-related risks for companies such as Ahold Delhaize are therefore a relevant consideration for determining *financial materiality*.
- 16.3.3 In this regard, there is evidence of clear signals from the financial and investment community that plastics is a topic of interest to them. As far back as 2018, Citibank described “*increased consumer and regulatory concern toward single-use plastic and other packaging materials*” as a “*critical investment theme*”.¹²⁰ Research conducted by Morgan Stanley in 2020 identified that plastic reduction sits alongside climate change as a top priority for sustainable investors, with 46% of investors describing themselves as “*very interested*” in including the theme of plastic reduction in investment portfolios.¹²¹
- 16.3.4 Index and credit rating agencies have warned of plastic-related financial risks for the whole supply chain. MSCI has stated that “[c]hanges in regulations could require companies to reformulate plastic products or even lead to them being shut out of the market”,¹²² warning that plastic production facilities could be “*the next stranded asset*”, in part due to regulatory measures affecting corporate users of plastic packaging having “*skyrocketed*”.¹²³
- 16.3.5 Furthermore, as reported by a trade press outlet earlier this year, international credit rating agency Moody’s produced a report cautioning the grocery retail sector specifically, reportedly warning that “[l]ack of progress in reducing plastics looks set to hit supermarket share prices”. The report warned of higher taxation, the possibility of environmental claims and product liability law suits related to “*the health impact of the use of plastics*”, further cautioning that the “*sheer scale of the problem suggests that government regulations will need to get much stricter*”.¹²⁴
- 16.3.6 Prominent commentators in the investment community have publicly stated that they consider the risks associated with plastics to be material to investors. For example, in 2019, the United Nations Environment Programme’s Principles for Sustainable Insurance initiative described plastic pollution as “*a material business risk that is relevant to insurers in all three of their roles – as risk managers, insurers and investors*”.¹²⁵ The PRI has also described plastic pollution as presenting “*an ever-evolving, systemic risk to investors*”,¹²⁶ a

¹¹⁷ Along with consumers, in Section 1, as well as on multiple occasions in Sections 3 and 4 of the Guidelines.

¹¹⁸ For example, “... *further improvements in the quantity, quality and comparability of disclosures are urgently required to meet the needs of investors and other stakeholders.*” Supplement, Section 1.1.

¹¹⁹ Supplement, Figure 1.

¹²⁰ Citi GPS, “*Rethinking Single-use Plastics: Responding to a Sea Change in Consumer Behaviour*” (2018)

¹²¹ Morgan Stanley Institute for Sustainable Investing, “*Sustainable Signals: Individual investor interest driven by impact, conviction and choice*”, (2021), p.5.

¹²² Chris Flood, “*Fund managers go to war on plastic waste*”, *Financial Times*, 18 May 2019.

¹²³ Samuel Block, “*The last straw: will plastic become the next stranded asset?*”, MSCI, 22 August 2019.

¹²⁴ Ian Quinn, “*Moody’s: supermarket share prices at risk due to slow progress on plastic*”, *The Grocer*, 28 April 2021.

¹²⁵ UNEP PSI, “*Unwrapping the risks of plastic pollution to the insurance industry*”, (2019), p.14.

¹²⁶ <https://www.unpri.org/pri-blog/how-investors-can-support-a-circular-economy-for-plastics-new-engagement-guidance/8089.article>.

view echoed by the Royal Bank of Canada, which stated that “*plastic pollution and sustainable packaging*” was a “*material issue*” with “*significant implications for investors*”.¹²⁷

- 16.3.7 These concerns have been reflected in engagement activities already taken by asset managers vis-à-vis investees on the plastics supply chain. For instance, BMO Global Asset Management has engaged with companies to reduce the amount of unnecessary single-use plastic and redesign packaging to reduce waste and improve the recyclability of plastic, with its first target being the “*food, beverage and consumer staples sector*”, describing plastic waste as “*a business risk that companies know they will have to address rapidly*”.¹²⁸ Schroders has engaged with investees on the issue too, including those in the food and beverage sector.¹²⁹
- 16.3.8 Some investors have taken even more decisive action. In the US, investors have filed shareholder proposals calling on food manufacturing companies and grocery retailers (including Kroger Co, Target Corporation and Walmart Inc – three companies that Ahold Delhaize identifies as peers in the Management Report¹³⁰) to achieve an absolute reduction in their use of plastic packaging.¹³¹ Commentators noted that these shareholder proposals have received high levels of support – “*well above the average level traditionally seen for environmental and social shareholder proposals*”.¹³²
- 16.3.9 This evidence demonstrates that plastic-related risks are a topic of widespread interest and concern in the investment community, and that the risks related to the topic facing the food and drink sector in particular are considered widely material by investors. As such, it follows that investors would expect and are entitled to see granular and decision-useful information on risks relating to the topic of plastic packaging in Ahold Delhaize’s non-financial statement.

16.4 Long term horizons for determining materiality

- 16.4.1 The financial risks we described in Section 14 are likely to manifest over various time horizons. A number of these risks are already materialising, such as regulatory initiatives affecting prolific users of single-use packaging. Others may materialise over the longer term, such as increases in the raw material costs associated with plastic packaging as a result of carbon emissions mitigation measures.
- 16.4.2 The Non-Financial Reporting Directive was introduced with the objective of “*fostering long-termism in financial and economic activity*”.¹³³ Accordingly, the Sources of Interpretation are clear that the time frames for determining *materiality* incorporate “*a longer term-horizon*”

¹²⁷ <https://www.rbcwealthmanagement.com/gb/en/research-insights/plastics-and-recycling-a-material-issue-for-investors/detail/>.

¹²⁸ “The last straw: will plastic become the next stranded asset?”, MSCI, (2019).

¹²⁹ Ibid.

¹³⁰ Management Report, p.84.

¹³¹ <https://www.asyousow.org/press-releases/2021/1/14/shareholder-proposals-consumer-goods-companies-plastic-packaging>.

¹³² <https://www.rbcwealthmanagement.com/gb/en/research-insights/plastics-and-recycling-a-material-issue-for-investors/detail/>.

¹³³ Supplement, Section 1.1 and Recital 3: “...disclosure of non-financial information is vital for managing change towards a sustainable global economy by combining long-term profitability with social justice.”

than is traditionally the case for financial information".¹³⁴ In relation to climate change, for example, the Supplement recommends that companies "[d]escribe the principal climate-related risks the company has identified over the short, medium and long-term".

16.4.3 On this basis, it is clear that all the risks we outlined in the preceding Section are relevant to the determination of the *financial materiality* of the topic, and those that may most appropriately be categorised as long-term risks cannot be disregarded for the purposes of the Reporting Requirements. These risks must be considered collectively in order to determine *financial materiality*.

16.4.4 The variety of ways that these risks could impact the business of Ahold Delhaize (direct costs, increased compliance, reputational harm, loss of market share, increase in price of an input to the business model of strategic importance), and the potential severity of the impacts if they do, both individually and collectively, clearly demonstrates that these risks are *financially material* for the purposes of the Reporting Requirements.

16.5 Sectoral and supply chain considerations

16.5.1 One of the key objectives of the Non-Financial Reporting Directive is to improve the comparability of non-financial information provided as between companies. It follows that users of financial information would expect that companies with similar business models, operating in the same sectors/on the same supply chain and depending on the same resources, would identify the same topics as *material*, subject to any particularities regarding their activities.

16.5.2 This is reflected in the Guidelines, which explicitly advise that "*sectoral issues*" should be taken into account in determining *materiality*, stating that "[s]imilar issues are likely to be material to companies operating in the same sector, or sharing supply chains".¹³⁵

16.5.3 It is therefore relevant that companies operating in the same sector as Ahold Delhaize have identified the topic of plastic packaging as *financially material*. For example, Carrefour SA, a grocery retail group incorporated in France and directly competing with Ahold Delhaize brands in several European countries, reaches this conclusion, identifying the topic of "*Eco-design of products and packaging and the circular economy*" as being *material* in terms of both its "*importance for external stakeholders*" and its "*impact on the business*".¹³⁶

16.5.4 Prominent food manufacturing and beverage companies – i.e. suppliers of branded products to Ahold Delhaize – have reached the same conclusion. Fast moving consumer goods company, Unilever,¹³⁷ identifies plastic packaging as a "*principal risk*" to its business, citing "*higher costs as a result of taxes or fines*" if Unilever were to be "*unable to comply with plastic regulations*"; and cost of recycled plastic and other packaging material

¹³⁴ Supplement, Section 2.2: "[c]ompanies are advised not to prematurely conclude that climate is not a material issue just because some climate-related risks are perceived to be long-term in nature".

¹³⁵ Guidelines, Section 3.1

¹³⁶ Carrefour Universal Registration Document 2020 Annual Financial Report, p. 27. Carrefour is also identified by Ahold Delhaize as being a European peer in the Management Report (see p. 129).

¹³⁷ Identified by Ahold Delhaize as a peer company in relation to the AEX and BEL20 – Management Report, p. 128.

increasing “*significantly in the foreseeable future*” as a result of “*high demand*”. Unilever states that collectively, these risks could “*impact [its] profitability and reputation*”.¹³⁸

16.5.5 Coca Cola Europacific Partners (formerly Coca-Cola European Partners) takes the same view, citing packaging (especially single-use plastic packaging) as a “*principal risk*” to its business, highlighting the likelihood of liability “*for increased costs relation to the design, collection, recycling and littering of our packaging*”, noting that this risk is likely to materialise in the next five years.¹³⁹

16.5.6 Finally, the Consumer Goods Forum – an industry body of which Ahold Delhaize is a member – has also highlighted the topic of plastic packaging as one having importance to the sector as whole. Commenting on the results of a poll amongst its members presented in April 2021, it stated that the topic of plastic waste “*is indeed very high on companies’ agendas*”.¹⁴⁰

16.6 Conclusion

16.6.1 The factors we list above are identified in the Sources of Interpretation as being relevant considerations to the determination of *financial materiality*. Applied to the evidence of the financial risks that Ahold Delhaize faces linked to the topic of plastic packaging, as outlined in Section 14, these factors clearly demonstrate that these risks are *financially material* to Ahold Delhaize in accordance with the Reporting Requirements.

16.6.2 This leads to the conclusion that Ahold Delhaize’s identification of the topic of plastic packaging as being “*material... from an ESG point of view*” but “*not yet from a financial point of view*” is incorrect, and that this, coupled with the absence of any disclosures relating to such risks in the Management Report, is a fundamental failure to disclose information that is sufficient for an understanding of the group’s “*development, performance [and] position*”, and therefore a breach of the Reporting Requirements.

Part IV

Breach 2– failure to disclose sufficient information for an understanding of the “*impact*” of Ahold Delhaize’s activity

17 Overview

17.1 In Part III, we established that Ahold Delhaize had breached the Reporting Requirements by stating that the topic of plastic packaging was not yet material to the group from a financial perspective and failing to disclose any information on financial risks to the group linked to the topic of plastic packaging, with the result that readers of the Management Report do not have sufficient information for an understanding of the “*development, performance [and] position*” of Ahold Delhaize.

¹³⁸ [Unilever Annual Report and Accounts 2020](#), p. 47.

¹³⁹ [Coca-Cola European Partners 2020 Integrated Report and Form 20-F](#), p.47

¹⁴⁰ https://www.theconsumergoodsforum.com/news_updates/cgf-plastic-waste-coalition-of-action-presents-informational-webinar-for-members/.

- 17.2 In Part IV of this Notification, we establish that Ahold Delhaize has also breached the Reporting Requirements by failing to provide *material* information on the topic of plastic packaging from an environmental perspective: despite acknowledging that the topic of plastic packaging is material to the group “*from an ESG point of view*”, the information that Ahold Delhaize provides on the topic is not sufficient “*for an understanding of... the impact of its activity*”.
- 17.3 Below, we assess the information provided by Ahold Delhaize on the topic of plastic packaging against the standard of information mandated by the Reporting Requirements in respect of each of the Core Categories. As we demonstrate, in each case, the disclosures provided by Ahold Delhaize falls short of meeting these standards.
- 17.4 Moreover, the limited information it does provide should be, but is not, supported by relevant KPIs, with the result that users of that information cannot monitor, assess or compare against the market (or at all) the Group’s management of non-financial matters and performance against related targets.
- 17.5 Taken together, this leads to the conclusion that Ahold Delhaize has failed to provide sufficient information for readers to understand the *impact* of the Group’s activity in relation to the topic of plastic packaging.
- 17.6 For the purposes of this analysis, we have separated the Core Categories into two interlinked areas:
- (i) *policies, due diligence* carried out in respect of policies and *outcomes* of policies; and
 - (ii) *risks and risk management*.

We also make reference to the general obligation to support disclosures in the Core Categories with KPIs where relevant.

18 Policies, due diligence and outcomes – overview of the Reporting Requirements

- 18.1 In line with the intention of the Non-Financial Reporting Directive to enable external stakeholders to measure and monitor the performance of companies with regard to sustainability matters,¹⁴¹ the Reporting Requirements oblige issuers to provide information regarding the *policies* they have in place in relation to the Subject Areas, the *due diligence* measures associated with these *policies* and their *outcomes*.
- 18.2 The Sources of Interpretation clarify what is understood by *policies, due diligence* and *outcomes* as follows:
- (i) *Policies* are described in the Guidelines as “*approaches to key non-financial aspects*”, including the “*main objectives*” of such approaches “*and how they are planning to deliver on those objectives and implementing those plans*”.¹⁴² The Supplement adds that the purpose of requiring disclosure of this information is to

¹⁴¹ Recital 3.

¹⁴² Guidelines, Section 4.2.

enable stakeholders to understand the “*robustness*” of the issuer’s approach to such matters.¹⁴³

- (ii) The Guidelines clarify that *due diligence* refers to how issuers are intending to “[*deliver*] against a concrete objective”.¹⁴⁴ An example given in the Supplement of relevant disclosures relating to policies and due diligence indicates that “*the rationale*” behind policies is relevant, as well as disclosures regarding the level of oversight over *material* topics and related policies.¹⁴⁵ *Due diligence* can therefore be summarised as the research conducted by an issuer to determine which policy to put in place regarding a particular *material* topic and to ensure its efficacy, as well as the internal processes in place to implement it and ensure the objective of the policy is achieved.
- (iii) Companies are required to report on the *outcomes* of their policies to provide stakeholders with the means to “*monitor and assess*” the company’s management of non-financial matters, including by reporting against the targets it has set.¹⁴⁶ The Guidelines state that this analysis “*should include relevant non-financial KPIs*”, including “*the KPIs that they consider most useful in monitoring and assessing progress and supporting comparability across companies and sectors*”.¹⁴⁷

18.3 As we explain below, Ahold Delhaize does not disclose *policies* on the topic of plastic packaging in accordance with the Reporting Requirements. The *due diligence* disclosed by the Group is high-level and general, and due to inconsistencies in terminology used in the Management Report, it is not clear whether the information provided relates to the topic of plastic packaging. It follows from the lack of coherent disclosure relating to *policies* that disclosures on *outcomes* are similarly limited, particularly by the Group’s failure to provide relevant KPIs indicating its performance against its objectives.

19 Insufficiency of information disclosed in the Management Report with regards to policies, due diligence and outcomes

Policies

19.1 In the Management Report, Ahold Delhaize discloses that it has the following objectives in place in relation to its own brand packaging only:

- (i) 100% of packaging to be recyclable, compostable or reusable by 2025;¹⁴⁸ and
- (ii) 25% of packaging to be made from post-consumer recycled content by 2025.¹⁴⁹

19.2 With reference to these objectives, Ahold Delhaize makes several broad statements on its actions, including for example, that the group is:

¹⁴³ Supplement, Section 3.2.

¹⁴⁴ Guidelines, Section 4.2.

¹⁴⁵ Supplement, Table 2.

¹⁴⁶ Supplement, Section 3.3.

¹⁴⁷ Guidelines, Section 4.3.

¹⁴⁸ This target reflects one of the commitments of the Ellen MacArthur Foundation ‘Global Commitment’ programme, a voluntary, non-binding scheme of which Ahold Delhaize is a signatory.

¹⁴⁹ Management Report, p.46.

- (i) “[working to] [r]educe the use of plastic and other packaging materials, decrease the weight of packaging, and increase the recyclability, reusability and recycled content of packaging”; and
- (ii) “aim[ing] to move towards a more circular system to reduce the negative impacts of plastics”.¹⁵⁰

19.3 Ahold Delhaize also provides several examples of actions taken on the topic of plastic packaging. For instance, it states that:

- (i) two of its brands (Albert Heijn and Delhaize Belgium) have changed the type of plastic used for packaging mushrooms to recyclable PET,¹⁵¹ and Delhaize has also “removed the plastic bag from oatmeal packaging”,¹⁵²
- (ii) Greek brand, Alfa Beta, has switched the packaging for own brand eggs from plastic to cardboard and launched a new line of “detergents and home cleaners with bottles made from 100% recycled abandoned fishing nets collected from the oceans”,¹⁵³ and
- (iii) US brand, The GIANT Company, had introduced new sealing technology for clam shell packaging, which “reduces the amount of plastic used”.¹⁵⁴

19.4 We note that the information provided on plastic packaging corresponds to own-brand goods, and Ahold Delhaize does not disclose any information relating to branded goods whatsoever. Since sales of branded goods account for more than half of its turnover, this represents a severe limitation in the information disclosed.¹⁵⁵

19.5 Moreover, the information that Ahold Delhaize does provide amounts to little more than a number of objectives, broad and general statements restating the objectives, and several highly specific examples, and does not correspond with the interpretation of a policy for the purposes of the Reporting Requirements.

19.5.1 First, the Sources of Interpretation clearly distinguish between “policies” and “objectives” – whilst objectives can form part of a policy, by indicating the overall goal that the policy is intending to move the issuers towards, they are not a *policy* in and of themselves.¹⁵⁶ As such, the fact that Ahold Delhaize has identified certain objectives relating to the topic of plastic packaging is not sufficient for the Group to be deemed to have disclosed *policies* on the topic.

¹⁵⁰ Ibid.

¹⁵¹ This example is referred to on three separate occasions in the Management Report: p. 20, p. 35 and p. 230.

¹⁵² Management Report, p. 230.

¹⁵³ Management Report, p. 80. On the same page, Ahold Delhaize also states that its brand Albert *had “introduced new recyclable shopping baskets in all remodeled stores,”* which is claimed was “also supporting plastic reduction”. Since this does not relate to plastic packaging, we do not include it in the list of examples of actions. However, we note that the claim that recyclable shopping baskets supports “plastic reduction” is unclear and unsubstantiated.

¹⁵⁴ Management Report, p. 230.

¹⁵⁵ For Ahold Delhaize, the breakdown of sales is 30.1% own-brand, 69.9% branded in the US and 48.5% own-brand, 51.5% branded in Europe. Management Report, p. 76 and p. 79.

¹⁵⁶ See the Guidelines, Section 4.2: “Companies should disclose material information that provides a fair view of their policies. They should consider disclosures on their approaches to key non-financial aspects, main objectives, and how they are planning to deliver on those objectives and implementing those plans.”

19.5.2 The statements referred to in Paragraph 19.2 do not add any information indicating how Ahold Delhaize “*is planning to deliver on those objectives*” either. The first amounts to little more than a reformulation of the objectives, and the second is highly general, failing to explain what is to be understood by “*a more circular system*”, or how Ahold Delhaize intends to achieve it.

19.5.3 The examples of actions referred to in Paragraph 19.3 are limited in scope to single products (and in one case only, a line of products) sold by only one or two Ahold Delhaize brands. Ahold Delhaize owns a total of 19 brands, presumably many own-brand products (not to mention branded products – see Paragraph 19.15). These actions are therefore too specific to be described as “*approaches*” in accordance with the Reporting Requirements. Moreover, they only refer back to certain elements of the objectives. The adoption of reusable packaging is not supported by such examples, nor is compostable packaging or recycled content.¹⁵⁷

19.6 Collectively, the information set out above is not a clear articulation of how Ahold Delhaize “*is planning to deliver on [its] objectives*”. As such, the “*robustness*” of the company approach to plastic packaging cannot be grasped. This information therefore cannot be described as disclosure of “*policies*” on the topic of plastic packaging for the purposes of the Reporting Requirements.¹⁵⁸

Due diligence

19.7 Ahold Delhaize does not provide any information specifically related to the topic of plastic packaging that could be described as *due diligence* for the purposes of the Reporting Requirements. Instead, the Group limits itself to general comments regarding the setting and implementation of the Group’s “*Healthy and Sustainable*” strategy, such as how the strategy is set,¹⁵⁹ the integration of targets pertaining to the strategy into its remuneration structure,¹⁶⁰ and the frequency with which the committee responsible for the strategy meets.¹⁶¹

19.8 These general disclosures on *due diligence* are distributed in various locations throughout the Management Report, and, due to inconsistency in the terminology used in the Management

¹⁵⁷ Ahold Delhaize provides an example of shopping carts being manufactured out of recycled plastic. However, this is not related to the topic of “*sustainable packaging*”.

¹⁵⁸ We note that the obligation to disclose policies relating to the Subject Areas is a “comply or explain” requirement, meaning that in the event an issuer does not have a policy relating to a Subject Area, it is required to explain why. However, there is nothing akin to an explanation of the lack of policies relating to the topic of plastic packaging in the Management Report.

¹⁵⁹ “*How we manage our Healthy and Sustainable strategy: The Executive Committee, supervised and advised by the Supervisory Board (and its Sustainability and Innovation Committee) has accountability for setting strategy and driving performance. Brand leadership is responsible for establishing implementation plans, resourcing their plans and monitoring performance.*” Management Report, p.225.

¹⁶⁰ “*In support of our Healthy and Sustainable ambition and in line with feedback we received from our stakeholders, 20% of the achievable cash bonus for our Management Board and Executive Committee, as well as our senior and mid-level leadership in 2021 will be tied to ambitious targets for healthier eating and the reduction of food waste and carbon emissions.*” Management Report, p. 126.

¹⁶¹ “*During 2020, the [Sustainability and Innovation] Committee held three meetings...*” Management Report, p. 121.

Report, it is unclear whether or not these general comments apply to the topic of plastic packaging.¹⁶²

- 19.9 In line with the general principle stated in the Guidelines that disclosure should be “*comprehensive but concise*”,¹⁶³ it is logical that issuers link certain topics together to describe the common due diligence processes shared between them in order to avoid repetition. However, the Guidelines also describe *due diligence* as how the issuer intends to “*deliver on concrete objectives*” (emphasis added), indicating that specificity is envisaged for a proper understanding of relevant due diligence processes.
- 19.10 For example, in its 2020 annual report, Unilever states which general *due diligence* measures also apply to the topic of plastic packaging,¹⁶⁴ as well as provides specific *due diligence* information that relates only to the topic of plastic packaging.¹⁶⁵
- 19.11 By comparison Ahold Delhaize has provided at best only general information regarding *due diligence* (assuming that the due diligence relating to the “*Healthy and Sustainable*” strategy does in fact apply to the topic of plastic packaging), and has not disclosed any information shedding light on internal processes relating to the topic of plastic packaging, its selection of objectives or allocation of accountability for meeting the objectives within the hierarchy of the Group or between its brands.

Outcomes

- 19.12 Despite several of its objectives containing quantitative targets, Ahold Delhaize does not disclose any KPIs revealing its progress against its objectives or the impacts of the actions taken by the Group in respect of plastic packaging. In fact, it only provides a single KPI on the topic of plastic packaging – the number of non-reusable plastic carrier bags distributed to shoppers during the financial year,¹⁶⁶ which is not a matter for which the Group has a quantitative target in place.¹⁶⁷
- 19.13 The absence of KPIs indicating progress against objectives means that stakeholders have no way to “*monitor and assess*” the actions that Ahold Delhaize has carried out on the topic of plastic packaging. As such, determining the *outcomes* of these actions, or comparing the performance of Ahold Delhaize against others issuers in the market, is not possible.

¹⁶² Ahold Delhaize refers both to its “*healthy and sustainable growth driver*” pp. 19 and 20 as well as its “*healthy and sustainable strategy*” (e.g. p. 238). The Group indicates in places that the topic of plastic packaging is included in this packaging (for example, describing its targets relating to packaging as one of the “*most important ESG targets that will drive our Healthy and Sustainable strategy*”) but in others, it indicates this it does not form part of the strategy (for example, on p. 137, Ahold Delhaize states that the strategy relates only to “*healthy products, food waste reductions and carbon emissions reductions*”).

¹⁶³ Guidelines, Section 3.3.

¹⁶⁴ Such as, for example, the inclusion of plastic targets alongside other targets in Unilever’s “*reward framework*”. Unilever Annual Report and Accounts, (2020), p. 58.

¹⁶⁵ Such as, for example, the level of organisational oversight accountability for the topic of plastic packaging within its organisational strategy, the level at which implementation of the strategy is overseen, with details such as names of individuals responsible and the frequency of meetings between them, as well as providing details such as the regularity of meetings and the attendees of such meetings, and the incentives for meeting targets for management employees. Ibid.

¹⁶⁶ Management Report, p. 229.

¹⁶⁷ In fact, plastic carrier bags are only otherwise referred to in the Management Report on one occasion (a reference to an aim of “*reducing single-use plastics for carrier bags*” without any further explanation or contextualisation).

19.14 Whilst Ahold Delhaize does not directly acknowledge the lack of KPIs to support its disclosures, the Group does make the following statement,

“[w]e have found it challenging to collect accurate packaging data, including the total tonnes of own-brand plastic packaging, the plastic types used and the recyclability of plastics. So far, we have calculated the tonnes of own-brand product plastic packaging and the percentage that is recyclable, reusable and/or compostable for approximately 60% of our total business”.

19.15 This statement is problematic because Ahold Delhaize’s inability to collect key data relating to its targets for around 40% of its business throws into question whether the objectives stated on the topic of plastic packaging are credible and attainable, or simply aspirational. If the latter, they cannot be said to contribute to the provision of *material* information on the topic of plastic packaging. Further, absent credible data to underpin objectives, Ahold Delhaize could be giving readers the impression that Ahold Delhaize is taking more action on plastic packaging than is actually the case.

19.16 Moreover, despite having stated that it has calculated data in respect of own-brand packaging for 60% of its total business, it does not actually disclose this data. This means that Ahold Delhaize has effectively not disclosed *any* information whatsoever that can be described as “*outcomes*” for the purposes of the Reporting Requirements.

20 Risks and risk management – overview of the Reporting Requirements

20.1 Both the language of Article 1(3)(d) and the Sources of Interpretation are clear that disclosures on *principal risks* and their *management* should reflect the *double materiality perspective*, and that issuers should therefore disclose both:

- (i) risks of negative impacts on the issuer (*financial materiality*) and the management of these risks;
- (ii) risks that the issuer will have a negative impact on the environment through its business relationships, products and services (*environmental materiality*);¹⁶⁸ and
- (iii) how these risks are managed.

20.2 In Part III, we established that Ahold Delhaize has not disclosed the financial risks of negative impacts on its business related to the topic of plastic packaging. Here, we focus on “*the risks that the issuer will have a negative impact on the environment through its business relationships, products and services*” (emphasis added) and “*how the group manages those risks*”.

Principal risks of adverse impacts on the environment

20.3 Recital 8 expands on what it to be interpreted by “*principal risk*”, stating that issuers “*should provide adequate information in relation to matters that stand out as being most likely to bring about the materialisation of principal risks of severe impacts, along with those that have already materialised*”, further stating that “*[t]he severity of such impacts should be judged by their scale and gravity*” (emphasis added). The likelihood of adverse impacts arising, the scale of the impacts and their severity are therefore all relevant factors for issuers to take into account with regards to disclosures on the adverse impacts of their activities.

¹⁶⁸ Supplement, Section 3.4.

- 20.4 It is also clear that issuers are expected to consider the environmental impacts of the value chains underlying the issuer’s business activities and not limit themselves to disclosures on the direct impacts of their business activities, which has been termed by commentators as the “*supply chain approach*”.¹⁶⁹
- 20.5 This is evident from the language of Article 1(3)(d) itself (the reference to issuers’ “*business relationships, products or services which are likely to cause adverse impacts*”) and also reinforced on multiple occasions in the Sources of Interpretation. For example, Guidelines state that companies should give express consideration to “*supply chain aspects*” of the impacts of their activities, and report on them where *material*.¹⁷⁰ With reference to climate change, the Supplement makes clear that companies are expected to report on emissions generated throughout the value chain underlying the issuer’s business activities.

“... *how the undertaking manages those risks*”

- 20.6 As well as identifying “*the principal risks... linked to the group’s operations*”, the Reporting Requirements oblige issuers to disclose “*how the group manages those risks*”.
- 20.7 Given that *risks* for the purposes of Article 1(3)(d) covers both risks to the issuer, and risks of the issuer having adverse impacts on the environment, it follows that *risk management* should deal with both types of risks. In its Universal Registration Document, Carrefour for example, provides two sets of “*risk maps*” – one relating to “*societal risks*”, in which it identifies these risks that it will have adverse impacts on the environment and society through its activities, and the other relating to risks to its business.
- 20.8 The Supplement provides further guidance in the form of suggested risk management disclosures relating to climate-risk, which make clear that disclosures on risk management should combine general information on processes that issuers have in place to identify, assess and manage risks, but also specific information relating to individual topics (such as climate change, or, in this case, the topic of plastic packaging) and how they are integrated into this framework.¹⁷¹

21 Insufficiency of information disclosed in the Management Report with regards to risks and risk management

Principal risks of adverse impacts on the environment

- 21.1 In Part I of this Notification, we set out an overview of the adverse impacts of plastics – plastic packaging in particular – on the environment. We demonstrated that each stage of the plastic lifecycle poses serious threats to the environment, and established that the severity of the plastic crisis has been acknowledged by prominent institutions and governments around the world.
- 21.2 On the basis of this evidence, there is no doubt that the environmental impacts of plastic packaging throughout its lifecycle are of such “*scale and gravity*” as to be considered matters which “*stand out as being most likely to bring about the materialisation of principal risks of severe impacts, along with those that have already materialised*” for the purposes of the Reporting Requirements. Indeed, Ahold Delhaize’s own identification of the topic of plastic packaging as

¹⁶⁹ Philip Lee, “[EU Taxonomy – How to put the Green in Green Finance](#)”, *Lexology*, 3 November 2020.

¹⁷⁰ Guidelines, Section 3.1.

¹⁷¹ Supplement, Table 4: “... *how processes for identifying, assessing and managing climate-related risks*” [i.e. *specific risks*] are integrated into the company’s overall risk management.”

“a material impact... from an ESG point of view” would indicate that the Group agrees with this assessment.

21.3 Nevertheless, in the Management Report, Ahold Delhaize makes only the following reference to the adverse impacts of plastic packaging on the environment:

“[a]]cross the globe, millions of tonnes of plastic ends up in landfills, is burned, or leaks into the environment – and that amount is rising every year. At the current pace, there will be more plastic than fish in the ocean by 2050. That is why... we’re working hard to eliminate plastic waste.”¹⁷²

21.4 This statement is limited in both breadth and depth. First, disregarding the “supply chain approach” mandated by the Reporting Requirements, Ahold Delhaize has limited its description of the environmental impacts of plastic to those associated with “plastic waste”, and does not address any other impacts associated with other parts of the plastic lifecycle, such as carbon emissions associated with plastic production, or leakage of plastic pellets used to manufacture plastic products.

21.5 Moreover, Ahold Delhaize does not make clear the link between its business activities and the issues linked to “plastic waste” to which it refers, providing no clear statement setting out how it contributes to these problems. Given that, as noted in Paragraph 19.4, Ahold Delhaize refers solely to targets and actions related to own-brand products in the remainder of the Management Report, this means that the Group fails completely to acknowledge the impacts of plastic packaging associated with products accounting for over half of its net sales.

21.6 Finally, Ahold Delhaize merely refers to landfill, burning and leakage of plastics into the environment, but does not provide any detail of what the environmental consequences of each of these are. Nor does it explain the significance of there being “more plastic than fish in the ocean by 2050”, or provide any insight into the effects of this, such as harm to marine wildlife or the accumulation of microplastics in the marine environment.

21.7 The result of this is that a reader of the Management Report would be unable to ascertain the nature of the adverse impacts of plastic packaging, their scale, or how Ahold Delhaize contributes to them. Since the topic of plastic packaging has been self-identified by Ahold Delhaize as *environmentally material* to the Group, by definition, this constitutes a manifest failure by Ahold Delhaize to provide *material* information on its adverse impacts on the environment in line with the Overarching Obligation.

Risk management

21.8 Although Ahold Delhaize provides general information on its approach to *risk management* in several different locations in the Management Report and supplements this general information with specific *risk management* disclosures on a number of topics, plastic packaging is not amongst them, nor any of the other topics that it identifies in the Management Report as having “a material impact from an ESG point of view, but not yet from a financial impact point of view”.¹⁷³

¹⁷² Management Report, p. 230.

¹⁷³ Such as, for example, product transparency, sustainable agriculture and fair labor practices in the supply chain. Management Report, p. 37.

- 21.9 Rather, Ahold Delhaize limits the specific *risk management* disclosures to those topics that the Group identifies as “[h]aving a material impact on our current strategic, operational, financial and compliance objectives”, and on topics that it identifies as “intersecting”, i.e. “that have a material impact on our current strategic, operational, financial and compliance objectives, both from an ESG and financial point of view”.
- 21.10 In relation to both the general and specific information that Ahold Delhaize provides on *risk management*, we note that Ahold Delhaize limits itself to discussing risk management as it relates to risks to the company, but not risks of the company causing *adverse impacts* on the environment or society. Since Ahold Delhaize also excludes topics it identifies as *environmentally material* from topic-specific disclosures on risk management, the result is that Ahold Delhaize does not disclose any information in the Management Report on how it manages the risk of the Group adversely affecting the environment, whether in relation to plastic packaging or any other *environmentally material* topic.

22 Conclusion

- 22.1 In Part IV, we compared the information that Ahold Delhaize provides on the topic of plastic packaging against the information requirements corresponding with each of the Core Categories. We summarise our conclusions as follows:
- (i) the targets, generalised statements and specific actions disclosed by Ahold Delhaize on the topic of plastic packaging fall short of a *policy* in the sense of the Reporting Requirements, and relate only to packaging of own-brand goods, which comprises less than half of Group’s net sales;
 - (ii) the Group has failed to disclose specific *due diligence* information on the topic of plastic packaging, as well as provide any data (quantitative or qualitative) on the *outcomes* of actions taken;
 - (iii) the description of the *risk of adverse impacts on the environment* associated with plastic packaging makes only brief reference to issues associated with “*plastic waste*”, without providing detail or contextualising Ahold Delhaize’s role in contributing to these issues; and
 - (iv) Ahold Delhaize does not provide any *risk management* information in the Management Report relating to either *risks of adverse impacts on the environment* broadly, nor those associated with plastic packaging in particular.
- 22.2 In each case, Ahold Delhaize falls short of providing information corresponding with the Core Categories to the standard mandated by the Reporting Requirements, which leads to the conclusion that, overall, Ahold Delhaize cannot be said to have provided *environmentally material* information on the topic of plastic packaging, i.e. sufficient information for a reader to understand the *impact* of the Group.
- 22.3 Taken together with Ahold Delhaize’s failure to disclose *financially material* information, as established in Part III, the Group has not complied with the Overriding Obligation, which is to provide sufficient information for an understanding of the group’s “*development, performance, position and impact.*”

Part V

Enforcement of the Reporting Requirements by the AFM in respect of breaches by Ahold Delhaize

23 Importance of compliance with the Reporting Requirements

23.1 The Financial Supervision Act provides that the supervisory conduct of the AFM is to focus on (inter alia) “*orderly and transparency in financial markets*” and “*integrity between market parties*”.¹⁷⁴ The subject matter of this Notification is directly relevant to these objectives for the following reasons:

23.1.1 The deficiencies in Ahold Delhaize’s corporate reporting create a material knowledge gap between the Group and its stakeholders, preventing them from forming an accurate picture of the Group’s “*development, performance, position and impact*”, comparing it to other companies operating in the same sector, or monitoring its progress over time.

23.1.2 Investors have emphasized that they need sufficient information on the impacts that companies have on the environment through their activities in order to inform their investment decisions in line with sustainability outcomes. Inadequate disclosure by companies of the risks they face related to sustainability matters is an impediment to shareholders demanding strategic responses from investee companies, jeopardizing the integrity and financial stability of companies, investors and the financial system.

23.1.3 Other stakeholders also have need of the information that issuers are obliged to disclose pursuant to the Decree, including pension holders, employees, other companies wanting to make responsible decisions about their supply chains, and consumers seeking to make more sustainable purchasing choices. We note that the latter group is an especially important group of stakeholders to Ahold Delhaize, as a consumer-facing company.

24 Publication of a press release by Ahold Delhaize

24.1 As we have demonstrated in this Notification, Ahold Delhaize’s failure to disclose *material* information on the topic of plastic packaging is systematic and severe, and goes right to the heart of the AFM’s remit as set out in the Financial Supervision Act.

24.2 We therefore request that the AFM take action in the way that will go furthest towards rectifying the knowledge gap arising from Ahold Delhaize’s failure to comply with the law, and in a manner that is consistent with this remit, by issuing a recommendation to Ahold Delhaize that it publish a press release outlining and correcting the deficiencies in the Management Report that we have identified in this Notification.

¹⁷⁴ *Wet op het financieel toezicht*, Article 1: 25.

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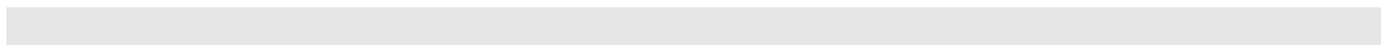
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