Public consultation on the revision of the nonfinancial reporting directive

Rethink Plastic Alliance Response

Rethink Plastic is an alliance of leading European NGOs, with thousands of active groups, supporters and citizens in every EU Member State. We bring together policy and technical expertise from a variety of relevant fields, and work with European policy-makers to design and deliver policy solutions along the value chain, for a future that is free from plastic pollution. We are part of the global Break Free From Plastic movement, along with over 1800 NGOs and millions of citizens worldwide.

1 Quality and scope of non-financial information to be disclosed

Question 1. To what extent do you agree or disagree with the following statements about possible problems with regard to non-financial reporting?

	1	2	3	4	5	N/A
The lack of comparability of non-financial information reported by companies pursuant to the NFRD is a significant problem.						
The limited reliability of nonfinancial information reported by companies pursuant to the NFRD is a significant problem.						
Companies reporting pursuant to the NFRD do not disclose all relevant non-financial information needed by different user groups.						

Question 2. Do you consider that companies reporting pursuant to the NFRD should be required to disclose information about other non-financial matters in addition to those currently set-out in Article 19a?

1. The recommendations set in the Commission 2019 Guidelines on reporting climate-related information under the Directive (https://ec.europa.eu/finance/docs/policy/190618-climate-related-information-reporting-guidelines_en.pdf) should be incorporated explicitly in the text of the Directive and the same structure of recommended disclosures for each of the reporting areas listed in the Non-Financial Reporting Directive [(a) business model (b) policies and due diligence (c) outcome of policies (d) principal risks and risk management and (e) key performance indicators] should be required for the environmental impacts aligned with the 6 environmental objectives of the taxonomy for sustainable activities: (1) climate change mitigation; (2) climate change adaptation; (3) sustainable use and protection of water and marine resources; (4) transition to a circular economy, waste prevention and recycling; (5) pollution prevention and control; (6) protection of healthy ecosystems.

2. Companies should be required to disclose their upstream and downstream impacts in relation to these categories with the same rigour required for reporting their greenhouse gas emissions (scopes 1, 2 and 3).
3. The requirements for the impacts of companies on each of these objectives should be developed in binding implementing acts, not in non-binding guidance.

Specific Disclosures related to plastic use, impacts and related risk

The production, intensive use and end of life of plastic have material impacts on all of the environmental objectives identified in the taxonomy for sustainable activities. Therefore, the reformed Directive (and implementing acts) should require plastic producers, fast moving consumer goods (FMCG) companies and other companies that make intensive use of plastic should disclose:

- The full account of the emissions (scopes 1, 2 and 3) linked to the plastic they use, put on the market or invest in.

- Physical and chemical pollution caused by pre-production plastic pellets of the plastic they produce, or linked to the plastic they place in the market (products or packaging). The production of plastic is associated with emissions of NOx and VOCs to the atmosphere play an important role in the formation of two important forms of secondary air pollution, ozone and particulate matter. Plastic production is also linked to wastewater discharges of polycyclic aromatic hydrocarbons (PAHs); benzene; phthalates; acrylonitrile; trichloroethylene; hexachlorobenzene; carbon tetrachloride; methyl chloride; 1,2,4-trichlorobenzene; 1,3-butadiene; lead; and dioxins.

- Toxic chemicals are heavily used in the manufacture of plastic. Companies should disclose the use in their supply chain of any chemical identified or regulated by the EU, national or internal law as a carcinogen, mutagen, reprotoxic, endocrine disrupters, neurotoxic, immunotoxic or persistent chemicals. This requirement should apply, as a minimum, to all chemical producing companies, to companies that produce consumer goods, to companies in the food sector, and to intensive chemical users such as the automotive industry.

- For companies that place plastic packaging or products in the market or that are the contact point between producers and consumers, the following information should be segregated by geography:
    - The amount of plastic packaging or products (in units, cubic meters and tonnes) placed in every market the company commercialises its products.
    - The proportion of said packaging or products that is reused by being returned to the producer for refill for the same purposes for which the packaging was designed.
    - The proportion of said packaging or products that is recycled.
    - The proportion of said packaging or products that can be expected to escape waste management systems and end up in the environment.
    - The impact on air quality linked to the incineration, open burning and ‘energy recovery’ of said packaging or products.

In relation to the non-financial key performance indicators (KPIs) relevant to the business, companies that place single-use plastic products or packaging in the market, or that are the contact point between producers and consumers should disclose at least:

A. the targets that the company has in place to:
- Reduce the amount of single-use packaging and items placed on the market each year.
- Increase the proportion of items sold through reusable and refillable packaging formats.
- Increasing recyclability of its products and packaging.

B. A yearly progress report on the attainment of such targets, with a summary of the number of persons responsible for the implementation of the policy, and the budget allocated to it, segregated geographically.

Plastic pollution is a material business risk that is relevant for plastic producers, intensive users of plastic (such as FMCG companies), as well as asset owners, asset managers and insurers. Said companies should be required to disclose their exposure to physical, reputational, liability and transition risks related to plastic, their mitigation strategies and their progress in the implementation of such strategies.

Question 3. Are there additional categories of non-financial information related to a company's governance and management procedures, including related metrics where relevant, (for example, scenario analyses, targets, more forward-looking information, or how the company aims to contribute to society through its business activities) that companies should disclose in order to enable users of their reports to understand the development, performance, position and impacts of the company?

1. Companies must be required to disclose a list of public claims and commitments related to non-financial matters made by the company during the previous financial year(s) and a description of whether the goals set in those commitments were achieved and the remediation plan in case they were not.
2. Companies must be required to disclose an improvement plan in relation to any of the 6 environmental objectives of the taxonomy for sustainable activities where the company has a material impact (as defined in consultation with relevant stakeholders) and report annually on progress. The plan should include short, medium and long term targets and capital expenditure plans aligned with the targets. The same should be required from asset owners and asset managers in relation to the impact of their investments on the 6 environmental objectives of the taxonomy for sustainable activities.

Question 4. In light of the importance of intangibles in the economy, do you consider that companies should be required to disclose additional nonfinancial information regarding intangible assets or related factors (e.g. intellectual property, software, customer retention, human capital, etc.)?

- Don't know / no opinion / not relevant

Question 5. To what extent do you think that the current disclosure requirements of the NFRD ensure that investee companies report the information that financial sector companies will need to meet their new disclosure requirements?

- To some extent but not much

Question 6. How do you find the interaction between different pieces of legislation?

- There are gaps

Question 7. In order to ensure better alignment of reporting obligations of investees and investors, should the legal provisions related to non-financial reporting define environmental matters on the basis of the six objectives setout in the taxonomy regulation: (1) climate change mitigation; (2) climate change adaptation; (3) sustainable use and protection of water and marine resources; (4) transition to a circular economy (5) pollution prevention and control; (6) protection and restoration of biodiversity and ecosystems?

- Yes

Please provide any comments or explanations to justify your answers to questions 1 to 7 (5000 characters):

Quality of information

The quantity and quality of information being disclosed by companies in relation to environmental, social and governance risks and impacts is falling far below the expectations and needs of investors and other relevant stakeholders such as academia, policy makers and civil society. This is not only due to the lack of detail in the Directive about the required disclosures, but also to the lack of enforcement by regulators of the existing duties.

Stakeholders must be provided with effective mechanisms to address their concerns and regulators must take more appropriate enforcement action, where non-compliance is identified.

The lack of more detailed standards means that even where legal compliance is achieved, the poor quality of disclosures results in limited information for investors and other stakeholders. It is therefore important that clear and consistent standards are developed and mandated, to supplement and guide the materiality-based approach currently adopted by the Directive.

Key terms used in the Directive, such as ‘materiality’, ‘policies’ and ‘due diligence’ must also be defined to ensure a common understanding and application of the Directive’s requirements.

Scope of information

In terms of the scope of information which should be provided, we believe a subset of specific issues should be added for each of the categories in Article 19a. For environmental matters, companies should disclose their direct and indirect (upstream and downstream, equivalent to scopes 1-3 emissions) impacts and risk exposure on the 6 categories identified in the Taxonomy Regulation: (1) climate change mitigation; (2) climate change adaptation; (3) sustainable use and protection of water and marine resources; (4) transition to a circular economy, waste prevention and recycling; (5) pollution prevention and control; (6) protection of healthy ecosystems.

In addition, companies must be required to disclose an **improvement plan** in relation to any of the 6 environmental objectives of the taxonomy for sustainable activities where the company has a material impact (as defined in consultation with relevant stakeholders) and report annually on progress. The plan should include short, medium and long term targets and capital expenditure plans aligned with the targets. The same should be required from asset owners and asset managers in relation to the impact of their investments on the 6 environmental objectives of the taxonomy for sustainable activities. For impacts and risks associated with climate change, this plan should be aligned with the Paris Agreement and must include an objective of achieving net-zero GHG emissions (Scopes 1- 3) by at least 2050.

In addition to being more specific in relation to targets, the Directive should be updated to establish more specific reporting obligations in relation to outcomes. For example, Art 19a(1)(c) should include an explicit requirement to disclose the performance of the company against targets set in relation to the company's impact on the environment (Scopes 1, 2 and 3) and in relation to environmental material business risks.

In doing these disclosures, companies should identify other persons or organizations that fall in the sphere of responsibility of the undertaking, based on financial, contractual or similar relationships.

2 Standardisation

Question 8. In your opinion, to what extent would a requirement on companies to apply a common standard for non-financial information resolve the problems identified?

- To a very great extent

Justification: A common set of indicators relevant for non-financial reporting, in particular sustainable development measures (environmental and social measures, climate position, resilience and climate change adaptation), will 1) ensure coherence between European companies in the implementation of important matters, such as the SDGs, 2) facilitate for the reporting companies to know what to focus on and strive for, 3) ensure comparability, 4) help financial companies, NGOs, think tanks, media and other stakeholders to measure progress.

Question 9. In your opinion, is it necessary that a standard applied by a company under the scope of the Non-Financial Reporting Directive should include sector-specific elements?

- Yes

Althought a number of non-financial reporting frameworks and standards already exist – some , including the standards of the Global Reporting Initiative (GRI), the framework of the International Integrated Reporting Council (IIRC), and the standards of the Sustainability Accounting Standards Board (SASB), aim to cover most or all relevant non-financial issues – and It is desirable to make the standard as sector-agnostic as possible to allow for comparability, e.g., between sectors, there are most likely sector-specific issues highly relevant for ESG/SDG development that allow for a sector-specific part of the standard, e.g., fuel, carbon, and material intensive sectors, as well as the food/agriculture sector, etc.

Question 10. To what extent would the application of one of the following standards or frameworks, applied on its own, resolve the problems identified while also enabling companies to comprehensively meet the current disclosure requirements of the Non-Financial Reporting Directive, taking into account the double-materiality perspective (see section 3)?

	1	2	3	4	NA
Global Reporting Initiative					
Sustainability Accounting Standards Board					
International Integrated Reporting Framework					

Justification:

GRI is widely used globally and has a high reliability and relevance for ESG-reporting (73% of the largest 250 companies in the world reporting on sustainability use GRI). It also has specific sets of indicators for environmental and social issues. GRI provides a large set of topics/metrics/questions that organizations themselves can chose from. This makes it non-comparable between companies as companies will chose differently depending on what they want to show their stakeholders.

SASB is focused on industry-specific sustainability factors and contains some important topics, however the chosen topics in the standard do not always disclose reasoning for why they were chosen. There is no definition of sustainability and no alignment with set sustainable development targets, such as the SDG goals. A quick glance through some of the standards show that relevant measures for the NFRD are left out, e.g., metrics on climate change (Asset Management & Custody Activities, Commercial Banks). The standards are very different between industries which do not allow for comparability between sectors. The framework seems primarily focused on the US market.

International Integrated Reporting Framework does not specifically state that an integrated report must contain information on sustainability and does therefore not meet the current disclosure requirements on environment, social and employee issues, human rights, and bribery and corruption. It is also more of a guidance document, not listing specific criteria or information that must be included.

10.1 Do you consider that other standard(s) or framework(s), applied on their own, would resolve the problems identified while also enabling companies to comprehensively meet the current disclosure requirements of the NFRD?

- No

10.2 Please specify which other standard(s) or framework(s) you consider, applied on their own, would resolve the problems identified while also enabling companies to meet the comprehensively current disclosure requirements of the NFRD, and to what extent:

On 5 December 2019, the Economic and Financial Affairs Council adopted conclusions on deepening the Capital Markets Union, in which it invited the Commission to “consider the development of a European non-financial reporting standard taking into account international initiatives”.

Most existing frameworks and standards focus on individual or a limited set of non- financial issues. Examples include the recommendations of the Task Force on Climate- related Financial Disclosures (TCFD), the UN Guiding Principles Reporting Framework (human rights), the questionnaires of the CDP (formerly the Carbon Disclosure Project), and the standards of the Carbon Disclosure Standards Board (CDSB). Several approaches have also been developed at EU level in the environmental area, including the Organisation Environmental Footprint and reporting under the Eco-Management and Audit Scheme (EMAS).

Question 11. If there were to be a common European non-financial reporting standard applied by companies under the scope of the NFRD, to what extent do you think it would be important that such a standard should incorporate the principles and content of the following existing standards and frameworks?

	1	2	3	4	NA
Global Reporting Initiative					
Sustainability Accounting Standards Board					
International Integrated Reporting Framework					
Task Force on Climate-related Financial Disclosures (TCFD)					
UN Guiding Principles Reporting Framework(human rights)					
CDP					
Carbon Disclosure Standards Board (CDSB)					

Organisation Environmental Footprint (OEF)					
Eco-Management and Audit Scheme (EMAS)					

Justification:

For GRI, SASB and IIRF see comments under Question 10.

TCFD has highly relevant recommendations and principles for climate-related issues. As an industry-led initiative, incorporation of the TCFD principles will better ensure the industry’s willingness to comply to a new standard. The framework is designed to fit all companies and has specific recommendations for the industries with the highest likelihood of climate-related financial impacts.

CDP is a yearly questionnaire that gives scores that are comparable with other companies. It is widely used globally as environmental disclosure system (over 8,400 companies) and is focused primarily on climate change/emissions (however water security and deforestation are also specific parts of the framework). It is advantageous that it is focused on quantitative results on greenhouse gas emissions as well as their underlying causes, and, as it is so widely used, incorporating requirements used by CDP will facilitate implementation of a revised NFRD for the companies already familiar with the CDP. CDP is aligned with TCFD and the questionnaire mentions the connections to SDGs. The CDP is however not a standard, there are no minimum requirements, and it is not comparable on specific items between companies apart from the overall score, which makes it less transparent.

CDSB contains some useful requirements on items that should be disclosed with regards to environmental reporting, particularly on ensuring management’s support, facility for external assessment, relevance of data provided (including analysis) and force the company to discuss future effects of environmental impacts, risks and opportunities. CDSB is TCFD aligned.

Organisation Environmental Footprint (OEF): It is highly important that the new NFRD contains verifiable metrics on environmental issues/risks. The OEF contains some good elements and is developed to support any sector. However the OEF dates from 2012 and is perhaps to some extent outdated as it is not taking into account developments after 2011 (e.g., not SDGs), it is a fairly heavy document (the consolidated version is 148 pages long) and not immediately easy to adopt for a reporting company or understand for a civil society organisation. It also contains a shall, should, may terminology – a standard should preferably have only one set of actual requirements (only shall). Furthermore, the OEF is not intended to directly support comparisons or comparative assertions, which should be a main aim with the NFRD.

Eco-Management and Audit Scheme (EMAS) is a certification more than a standard and requires the implementation of ISO14001 before a certification can be obtained. However, the revised NFRD should examine the EMAS(/ISO14001) for potential integration of purposeful metrics for yearly reporting and monitoring. It should at least include the EMAS requirements to 1) make a commitment to continually improving their environmental performance; 2) show an open dialogue with all stakeholders; 3) involve employees in improving the organisation's environmental performance; 4) publish and update an environmental statement for external communication yearly. Also, as mentioned in EMAS, objectives and targets should be SMART (specific, measurable, achievable, realistic, time-bound).

11.1 Do you consider that the principles and content of other existing standard(s) or framework(s) should be incorporated in a potential common European non-financial reporting standard?

- Don't know / no opinion / not relevant

11.2 Please specify the existing standard(s) or framework(s), whose principles and content should be incorporated in a potential common European non-financial reporting standard.

N/A

Question 12. If your organisation applies any non-fully financial reporting standard or framework when reporting under the provisions of the NFRD, please indicate the recurring annual cost of applying that standard or framework (including costs of retrieving, analysing and reporting the information):

N/A

Question 13. In your opinion, would it be useful for there to be a simplified standard and/or reporting format for SMEs?

- Yes

Justification: From a SDGs/Agenda2030 and EU sustainable development point of view it is strongly preferred to include SMEs, not just large companies, in the compliance with the revised NFRD, allowing for greater transparency, better comparability and faster ESG improvements. Careful attention should be paid to closing any loopholes that allow larger companies to report under the simplified standard.

Question 14. To what extent do you think that a simplified standard for SMEs would be an effective means of limiting the burden on SMEs arising from information demands they may receive from other companies, including financial institutions?

- To a very great extent

Justification: A common reporting standard would probably limit the burden on SMEs to a great extent. Other companies and financial institutions would know where to find most data they look for (one point for all) and what data to expect. The reporting company will save time and resources on not conducting the same data gathering for each request and only replying to specific requests.

Question 15. If the EU were to develop a simplified standard for SMEs, do you think that the use of such a simplified standard by SMEs should be mandatory or voluntary?

- Mandatory

Justification: Mandatory standards imply that all companies will be comparable on the set indicators/metrics in the standard and stakeholder companies will know what information to expect from any company. This greater transparency will allow for faster improvements in line with the SDG developments (what is measured improves), better verification possibilities, better stringency and strengthen the importance of EU's goals for a sustainable future.

To "force" companies to consider sustainable non-financial metrics will also make the companies better positioned for the future (The SDGs are due in less than 10 years, it's time to act). One important point however is not to add too much to the financial burden of small companies; e.g., the EMAS requires the implementation of ISO 14001.

A new NFRD should rather include all required metrics itself and/or make a benchmarking exercise so that companies already measuring against a certain framework will know what metrics they can reuse, rather than force the use of another (costly) management system upon them.

Question 16. In light of these responses, to what extent do you agree that the body responsible for developing a European non-financial reporting standard should also have expertise in the field of financial reporting in order to ensure "connectivity" or integration between financial and non-financial information?

- To a reasonable extent

Justification: It is important that non-financial and financial data are not treated separately, and that non-financial reporting is better integrated with financial information in the yearly management report. This will encourage management to take the sustainable non-financial reporting more seriously and underline the fact that all companies must step up and be the transformative change required to achieve the SDGs.

Question 17. The key stakeholder groups with an interest in and contributing to the elaboration of financial reporting standards have historically been investors, preparers of financial reports (companies) and auditors/accountants. To what extent to do you think that these groups should also be involved in the process of developing a European non-financial reporting standard?

	1	2	3	4	NA
Investors					
Preparers					
Auditors/accountants					

Justification:

Investors are important stakeholders in the new NFRD development as they will be key users of the information. It is also important to get their expertise to ensure integrability with financial aspects.

Preparers are important to get on-board to ensure practical usability of new metrics, based on their experience in preparations of reports and knowledge of best-practice methods.

Auditors the current practice of allowing for different levels of assurance (reasonable, limited, derivative) over different parts of the annual report is very confusing and potentially misleading for users. Going forward any audit/assurance required by law must require a standard of 'reasonable assurance'. The participation of auditors will contribute to establishing the new metrics provide information that auditors can give reasonable assurance.

Question 18. In addition to the stakeholders referred to in the previous question, to what extent to do you consider that the following stakeholders should be involved in the process of developing a European non-financial reporting standard?

	1	2	3	4	N/A
Civil society representatives/NGOs					
Academics					

Justification:

Civil society such as environmental organisations and sustainability focused think tanks have led much of the development on sustainability in the recent years. They sit on extensive knowledge and research on sustainability matters and should be included to ensure that the most important sustainability issues are not missed in the process.

Academics should be included to a very great extent. There is most likely highly relevant new research around metrics, sustainability issues, planetary boundaries, efficiency of standards etc., which is important to include in the development.

18.1 Do you consider that other stakeholder(s) should be involved in the process of developing a European non-financial reporting standard?

Yes

18.2 Please specify which other stakeholder(s) you consider should be involved in the process of developing a European non-financial reporting standard and to what extent:

Existing sustainability reporting frameworks, to a very great extent.

Question 19. To what extent should the following European public bodies or authorities be involved in the process of developing a European nonfinancial reporting standard?

	1	2	3	4	N/A
European Securities Markets Authority (ESMA)					
European Banking Authority (EBA)					
European Insurance and Occupational Pensions Authority (EIOPA)					
European Central Bank (ECB)					
European Environment Agency (EEA)					
Platform on Sustainable Finance					

Justification:

ESMA and EBA, with their task to create a single rulebook for EU financial markets through technical standards, are probably well placed to have insightful input to some extent to the development of the new NFRD standard, in particular to ensure its usefulness and applicability to the finance sector. For the same reason, EIOPA's expertise from promoting a sound regulatory framework of the insurance and pensions sectors in Europe will be useful in the new NFRD standard development.

ECB has carried out some important work on sustainable finance, perhaps most recently a guide on how it expects banks to manage climate-related and environmental risks and disclose such risks transparently. Drawing on this and previous experience on climate and environmental related issues in the finance sector, the ECB can be an important contributor to the new NFRD.

EEA has a key role to provide reliable information on environmental and sustainable development to European policy-makers and as such will have a key role in ensuring that sustainability metrics in the new standard are relevant and reliable. EEA also coordinates Eionet, a well-known and trusted provider of high-quality data and assessments for Europe, which encompasses the concept of shared standards and tools and agreed common content (data, information, indicators, analysis), hereby sitting on a large network of expertise from institutions (national, regional, European, international) and civil society, highly relevant for the NFRD development.

The International Platform on Sustainable Finance (IPSF), as a forum for public authorities in charge of developing environmentally sustainable finance policies, will be an important player to ensure compliance between affected bodies of the European Union and national authorities. It is probably also well placed to coordinate at least parts of the development to ensure that ESG factors are integral parts of the new standard and that the standard is aligned with SDGs and the overall EU sustainable development agenda.

19.1 Do you consider that other European public body/ies or authority/ies should be involved in the process of developing a European non-financial reporting standard?

- Don't know / no opinion / not relevant

19.2 Please specify which other European public body/ies or authority/ies you consider should be involved in the process of developing a European non-financial reporting standard and to what extent:

N//A

Question 20. To what extent to do you consider that the following national authorities or bodies should be involved in the process of developing European non-financial reporting standards?

	1	2	3	4	N/A
National accounting standards-setters					
Environmental authorities					

National accounting standards-setters are important stakeholders in the development of the new NFRD as they are responsible for the development of national accounting principles and the setting up of annual accounts in their respective country. National accounting standard setters' involvement in the NFRD development can however probably be clustered through the Accounting Regulatory Committee (ARC), which is composed of representatives of EU countries.

Environmental authorities' involvement in the NFRD development in each country can probably (and for efficiency reasons) be clustered under the EEA network of national focal points (NFPs). NFPs are typically based in national environment agencies or environment ministries and are responsible for coordinating national networks and networks of national reference centres, bringing together experts from national institutions and other bodies involved in environmental information.

20.1 Do you consider that other type of national authorities or bodies should be involved in the process of developing a European non-financial reporting standard?

- Yes

20.2 Please specify which other type of national authorities or bodies you consider should be involved in the process of developing a European nonfinancial reporting standard and to what extent:

	1	2	3	4	N/A
International Accounting Standards Board (IASB)					
Accounting Regulatory Commitee (ARC)					

Consumer protection authorities					

Justification:

International Accounting Standards Board develops international financial reporting standards (IFRS), a common accounting language to make company accounts understandable and comparable across international boundaries. The European Commission requires all listed companies to prepare their consolidated financial statements in accordance with the IFRS, however EU must adopt these standards before they come into force.

European Financial Reporting Advisory Group (EFRAG), is an independent organisation providing expert advice to the Commission. ARC (See Question 20) and EFRAG are both advisory organisations when new IFRS are to be endorsed in the EU. ARC and EFRAG with their knowledge of developing accounting standards internationally will probably have important input to the NFRD development.

Consumer protection authorities, consumers are relevant stakeholders for the purposes of the Directive and the contribution of these authorities would elucidate the requirements of these standards for the provision of information material to these stakeholders.

Please provide any comments or explanations to justify your answers to questions 8 to 20:

The adoption and mandation of a consistent standard for companies to report environmental, social and governance risks and impacts would help improve the quality of information. The adoption of standards will not however solve the problem entirely. As we have seen in the realm of financial accounting, it is critical that reporting standards are underpinned by an overarching 'true and fair view/materiality' principle in order to ensure that formal compliance with standards does not hide or undermine the provision of clear and comprehensive information to the market and public sphere.

We believe that a consistent set of standards which applies to all companies (including SME's in 'high risk' sectors that bear higher sustainability risk or impacts, to be defined in a delegated act using NACE codes at the relevant level of granularity) would be the simplest and most effective means for ensuring that investors and other stakeholders have the information they need to inform their decisions. In order to prevent an undue reporting burden for SMEs outside 'high risk sectors', simplified standards should be developed and the principles of 'materiality' and 'proportionality' should underpin the application of any such standards. Specific guidance and/or staggered phase-in for SME's may also help address concerns about undue burdens or disproportionate impacts for smaller businesses.

Additionally, as for financial accounting, it is imperative to ensure that investors and other users of disclosures have access to effective accountability mechanisms for misleading disclosures, that auditors provide assurance over the information, and that regulators can and do pursue effective enforcement for non-compliance.

While there are now a range of standards which companies should already be using as a basis for making their disclosures, none of them are entirely comprehensive or appropriate to achieving the purposes of the NFRD. Accordingly, the EU should seek to develop a set of standards to guide reporting under the NFRD. In the meantime, however, companies should be required to select and report against an existing standard and to justify their choice and explain any places where they have departed from them.

Regardless of the progress on a broader overarching standard, because of the scale and urgency of the challenges associated with climate change, all companies subject to the Directive should be required to report as soon as possible, using the recommendations of the Taskforce on Climate-related Financial Disclosures (TCFD). Additionally, they should be required to report a strategy to align their business with the objectives of the Paris Agreement, using the Science-Based Targets methodology, or equivalent.

RPA recommends that the EU sets minimum core aspects on climate and environmental aspects as part of the new NFRD. A limited number of mandatory (sector specific) indicators will enable disclosed information to be compared across companies, which currently is one of the main flaws of the NFRD. These mandatory indicators should be complemented by a set of additional indicators. Overall the selection of indicators should be aligned to the environmental and social aspects covered in the EU Taxonomy, and those covered in the EU ecolabel for financial products, in order to facilitate and streamline data collection requirements enabling the development of sustainable finance in the EU.

A broad range of stakeholders should play a leading role in helping to develop the standards, to ensure that there is widespread buy-in for the standards that are finally produced. Because of their special expertise and broader perspective, civil society and academics should also have a significant role in standard development.

3 Application of the principle of materiality

Question 21. Do you think that the definition of materiality set-out in Article 2 (16) of the Accounting Directive is relevant for the purposes of determining which information is necessary to understand a company's development, performance and position?

- To a reasonable extent

Question 22. Do you think that the definition of materiality set-out in Article 2 (16) of the Accounting Directive is relevant for the purposes of determining which information is necessary to understand a company's impacts on society and the environment?

- To a reasonable extent

Question 23. Is there is a need to clarify the concept of 'material' nonfinancial information?

- Yes

Question 23.1 If you do think there is a need to clarify the concept of 'material' non-financial information, how would you suggest to do so?

In order to be meaningful and enforceable as a legal principle, the term 'materiality' must be defined by reference to the reasonable expectations of the users of the relevant information. The users of the information that requires disclosure under the directive are not limited to investors, but also encompass civil society, consumers, policy makers and other relevant stakeholders. The reasonable expectations will of all the relevant stakeholders need to be reflected in the relevant definition and taken into account.

Currently there is far too much discretion and leniency afforded for company directors and management to decide what does and does not count as material in relation to both financially material risks and social and environmental impacts. The Directive should set minimum requirements for which impacts and risk are material – the former, in relation to the 6 environmental objectives of the taxonomy for sustainable activities. However, companies must also be required to regularly obtain and take into account the views of investors and other stakeholders on what information is material to them. Many companies already do so (See, for example, the materiality process used by PMI: https://www.pmi.com/media-center/news/material-impacts-defining-our-sustainable-priorities).

Clearly defining and mandating this approach is essential to create a more level playing-field to support best practice. It is also essential if companies are to be properly held accountable for omitting or obfuscating material information.

Question 24. Should companies reporting under the NFRD be required to disclose their materiality assessment process?

- Yes

Please provide any comments or explanations to justify your answers to questions 21 to 24:

The term 'materiality' must be explicitly included within the Directive and expanded to include relevance for risk/return based investment decisions, as well as ESG impact-based decisions, and to refer to the interests of broader stakeholders, such as creditors, regulators, employees, customers, pension scheme managers, and civil society.

Companies must be required to disclose their materiality process and more detailed guidance needs to be provided to ensure that there is a level playing field so that consistent approaches are taken to determining materiality between companies, particularly those in the same sector.

4 Assurance

Question 25. Given that non-financial information is increasingly important to investors and other users, are the current differences in the assurance requirements between financial and non-financial information justifiable and appropriate?

- Not at all

Question 26. Should EU law impose stronger assurance requirements for non-financial information reported by companies falling within the scope of the NFRD?

- Yes

Question 27. If EU law were to require assurance of non-financial information published pursuant to the NFRD, do you think that it should require a reasonable or limited assurance engagement on the non-financial information published?

- Reasonable

Question 28. If EU law were to require assurance of non-financial information published pursuant to the NFRD, should the assurance provider assess the reporting company's materiality assessment process?

- Yes

Question 29. If assurance of non-financial information was required by EU law, should the assurance provider be required to identify and publish the key engagement risks, their response to these risks and any related key observations (if applicable)?

- Yes

Question 30. If assurance of non-financial information was required by EU law, do you think that assurance engagements should be performed based on a common assurance standard?

- Yes

Question 30.1 If you answered yes in reply to the previous question, please explain whether there is an existing assurance standard that could be used for this purpose or whether a new standard would need to be developed:

Assurance of information disclosed under the NFRD should be integrated into the overall audit. The following standards can effectively be used for this purpose:

- International Standard on Auditing 200 (ISA 200) Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with International Standards on Auditing
- International Standard on Auditing 720 (ISA 720)The Auditor's Responsibilities Relating to Other Information

- International Standard on Assurance Engagements 3000 (ISAE 3000) Assurance Engagements Other than Audits or Reviews of Historical Financial Information
- Proposed IAASB guidance on the application of ISAE 3000 (forthcoming)

Question 31. Do you think that an assurance requirement for non-financial information is dependent on companies reporting against a specific nonfinancial reporting standard?

- No

Question 32. Do you publish non-financial information that is assured?

- No

Question 32.1 If you do publish non-financial information and that information is assured, please indicate the annual costs of such assurance:

N/A

Question 32.2 If you provided an answer to the previous question, please describe the scope of the assurance services provided (issues covered, reasonable/limited, etc.):

N/A

Please provide any comments or explanations to justify your answers to questions 25 to 32:

In order to ensure that users of information disclosed under the NFRD can trust and rely on that information for making investment and stewardship decisions, it is critical that assurance is provided over that information. Because, this information is increasingly used alongside traditional forms of financial accounting and reporting it is imperative that the assurance of information disclosed under the NFRD is integrated into the overall audit.

The current practice of allowing for different levels of assurance (reasonable, limited, derivative) over different parts of the annual report is very confusing and potentially misleading for users. Going forward any audit/assurance required by law must require a standard of 'reasonable assurance'. Due to their principles based nature, audit and assurance standards already provide significant flexibility and proportionality to allow for different approaches and levels of work in relation to different types of information in different contexts.

5 5. Digitisation

Question 33. To what extent do you agree or disagree with the following statements regarding digitalisation of non-financial information?

	1	2	3	4	5	N/A
It would be useful to require the tagging of reports containing nonfinancial information to make them machine- readable.						
The tagging of nonfinancial information would only be possible if reporting is done against standards.						
All reports containing nonfinancial information should be available through a single access point.						

Question 34. Do you think that the costs of introducing tagging of nonfinancial information would be proportionate to the benefits this would produce?

- To a very great extent

Question 35. Please provide any other comments you may have regarding the digitalisation of sustainability information:

NA

Please provide any comments or explanations to justify your answers to questions 33 to 35:

In our experience, reviewing annual reports manually is currently slow and time consuming. In particular, comparison is difficult between companies because of the wide variety of formats and layouts used. It would be far more efficient if all reports were available in one location and tagged digitally. This would more easily allow for analysis and comparison by investors, as well as other concerned stakeholders.

Tagging by reference to standards would be helpful. However, even in the absence of comprehensive standards, tagging would still be helpful – particularly if companies were required to tag by reference to signal which information fulfils which component of the existing legal requirements.

6 Structure and location of non-financial information

Question 36. Other consequences may arise from the publication of the nonfinancial statement as part of a separate report. To what extent do you agree with the following statements:

	1	**2**	**3**	**4**	**NA**
The option to publish the non-financial statement as part of a separate report creates a significant problem because the non-financial information reported by					

companies is hard to find (e.g. it may increase search costs for investors, analysts, ratings agencies and data aggregators).					
The publication of financial and non-financial information in different reports creates the perception that the information reported in the separate report is of secondary importance and does not necessarily have implications in the performance of the company.					

Question 37. Do you believe that companies should be required to disclose all necessary non-financial information in the management report?

- **Yes**

Question 38. If companies are allowed to publish the required non-financial information in a report that is separate from the management report, to what extent do you agree with the following approaches?

	1	2	3	4	5	NA
Legislation should be amended to ensure proper supervision of information published in separate reports.						
Legislation should be amended to require companies to file the separate report with Officially Appointed Mechanisms (OAMs).						
Legislation should be amended to ensure the same publication date for management report and the separate report.						

Question 38.1 Please provide any comments regarding the location of reported non-financial information:

In order for information required to be disclosed under the NFRD to be trustworthy and useful for investors it must be disclosed in the annual Management Report, filed with OAMs and subject to the same level of assurance and accountability as any other information that is relied on for investment decision-making. Unless this required there is a significant risk that investors and other stakeholders will be misled by inaccurate or misleading information being disclosed.

Question 39. Do you consider that the current segregation of non-financial information in separate non-financial and corporate governance statements within the management report provides for effective communication with users of company reports?

- To a reasonable extent

Please provide any comments or explanations to justify your answers to questions 36 to 39:

Information required to be disclosed under the NFRD should be disclosed in the annual Management Report, filed with OAMs and subject to the same level of assurance and accountability as any other information that is relied on for investment decision-making. It should be clearly signposted and electronically tagged in the Management Report and closely integrated with other disclosures in the Annual Report and financial accounts

The current approach, which allows Member States to permit companies to disclose NFRD-related information outside of the mainstream annual report severely undermines the consistency, quality and usability of disclosed information.

7 Personal scope (which companies should disclose)

Question 40. If the scope of the NFRD were to be broadened to other categories of PIEs, to what extent would you agree with the following approaches?

	1	2	3	4	5	NA
Expand scope to include all EU companies with securities listed in regulated markets, regardless of their size.						
Expand scope to include all large public interest entities (aligning the size criteria with the definition of large undertakings set out in the Accounting Directive: 250 instead of 500 employee threshold).						
Expand scope to include all public interest entities, regardless of their size.						

Question 41. If the scope of the NFRD were to be broadened to non-PIEs, to what extent would you agree with the following approaches?

	1	2	3	4	5	NA
Expand the scope to include large non-listed companies.						
Remove the exemption for companies that are subsidiaries of a parent company that reports nonfinancial information at group level in accordance with the NFRD.						

Expand the scope to include large companies established in the EU but listed outside the EU.						
Expand the scope to include large companies not established in the EU that are listed in EU regulated markets.						
Expand scope to include all limited liability companies regardless of their size.						

Question 42. If companies were required to disclose non-listed non-financial information, do you consider that there should be a specific competent authority in charge of supervising their compliance with that obligation?

- Yes

Question 42.1 If you consider that there should be a specific competent authority in charge of supervising non-listed companies' compliance with the obligation of disclosing non-financial information, please specify who in your opinion should carry out this task (National Competent Authorities, European Supervisory Authorities, other...) and how:

This supervision should be undertaken in the first instance at the country level by national corporate and financial reporting regulators. It should be overseen and coordinated at the EU level by ESMA. There should be ample mechanisms for public participation in the supervision process, so that the relevant stakeholders can support the implementation and enforcement of the duties under the Directive.

Question 43. To what extent do you agree with the following statements relating to possible changes of the personal scope of the NFRD for financial institutions?

	1	2	3	4	5	N/A
The threshold criteria for determining which banks have to comply with the NFRD provisions should be different from those used by Non-Financial Corporates.						
The threshold criteria for determining which insurance undertakings have to comply with the NFRD provisions should be different from those used by Non-Financial Corporates.						

Please provide any comments or explanations to justify your answers to questions 40 to 43:

To ensure an even playing field, the NFRD should apply to as broad a cross section of companies as possible. Because of the very large number of small companies, there will need to be some limiting principle, but this should be set at a low threshold.

We also have significant concerns that large multinational companies with lots of subsidiaries are publishing reports that may be extensive, but are at such an aggregated level, that it can be very difficult to interpret. This allows for cherry-picking of positive examples and downplaying negative impacts and risks. In this respect, it would be useful to require large companies to report separately in relation to different parts of the business, business units, or geographies, as is encouraged in financial reporting.

8 Simplification and reduction of administrative burdens for companies

Question 44. Does your company publish non-financial information pursuant to the NFRD?

- No

Question 41.1 If your company publishes non-financial information pursuant to the NFRD, please state how much time the employees of your company spend per year carrying out this task, including time of retrieving, analysing and reporting the information. Please provide your answer in terms of full-time-equivalents (FTEs, 1 FTE = 1 employee working 40h a week during 250 working days per year). Please provide your answer for reports published in 2019, covering financial year 2018.

NA

Question 44.2 Please state the total cost per year of any external services, excluding the cost of any assurance or audit services, that you contracted to assist your company to comply with the requirements of the Non-Financial Reporting Directive. Please provide your answer for reports published in 2019, covering financial year 2018.

NA

Question 45. To what extent do you agree with the following statements?

	1	2	3	4	5	NA
Companies reporting pursuant to the NFRD face uncertainty and complexity when deciding what nonfinancial information to report, and how and where to report such information.						
Companies are under pressure to respond to individual demands for nonfinancial information from sustainability rating agencies, data						

providers and civil society, irrespective of the information that they publish as a result of the NFRD.						
Companies reporting pursuant to the NFRD have difficulty in getting the information they need from business partners, including suppliers, in order to meet their disclosure requirements.						

Please provide any comments or explanations to justify your answers to questions 44 to 45:

Because companies are granted unique benefits of limited liability and legal personality, the quid-pro-quo is that they must be required to provide detailed and accurate information to their stakeholders about their environmental, social and governance risks and impacts. The costs of providing information required by the NFRD must not be relied on as a basis for providing poor quality or inadequate information.

Where companies provide high quality information and have taken into account the reasonable needs of investors and other stakeholders, as required by the double materiality test in the NFRD Guidance, then they will be more likely to have satisfied the requests of sustainability rating agencies, data providers and civil society.

Additional Information

Closing the accountability and enforcement gap

As noted in our comments in relation to questions 1-7, we believe that the biggest barrier to better quality reporting under the NFRD is the current enforcement and accountability gap. Investors and other relevant stakeholders must be provided with effective mechanisms to address their concerns about misleading or inadequate disclosures and regulators must be empowered to take appropriate enforcement action, where non-compliance is identified.

In particular, we believe that the Directive must be amended to ensure that Member States, in their transposition of the Directive, enact accountability mechanisms and penalties that are sufficiently dissuasive and proportionate (and public), and require that these are applicable not only to the undertakings but also to the company directors that are ultimately responsible for any failures of compliance. Among other things, this should include provision for a specific shareholder vote in relation to the reappointment of directors (eg. audit committee chair) and/or auditor with specific responsibilities in relation to NFRD-related reporting; and/or providing for a specific shareholder indicative vote to demonstrate satisfaction/dissatisfaction with NFRD-related disclosures, (similar to 'say on pay' votes in some jurisdictions).

Because NFRD-related disclosures are now being used and relied on by investors for financial decisions, and by other stakeholders for a wide range of other purposes, it is imperative that the same oversight and accountability applies to this information, as to traditional financial disclosures. For this reason, the Transparency Directive, Market Abuse Regulation, and other related Directives and Regulations must be updated to appropriately reflect this.

Due Diligence

It is our understanding that the Commission intends to introduce a new legislative initiative next year on mandatory due diligence for companies. RPA strongly supports this initiative. Please see this briefing published last year by the RPA member ClientEarth together with Global Witness, which explicitly calls for exactly such an initiative. See here: https://www.documents.RPA.org/library/download-info/strengthening-corporate-responsibility/

While we understand that the new legislative initiative around due diligence is still being developed, the likely direction of travel must be taken into account and integrated as much as possible into any revisions to the NFRD. In particular, any revisions to the NFRD should include a placeholder and/or provide appropriate flexibility to support the integration of due diligence-related reporting, when the due diligence legislative initiative is finalised.