

ENNHRI Submission for the public consultation on revision of the Non-Financial Reporting Directive 2014/95/EU

The European Network of National Human Rights Institutions ([ENNHRI](#)) brings together over 40 National Human Rights Institutions (NHRIs) across wider Europe. Its goal is to enhance the promotion and protection of human rights across the European region.

European NHRIs have initiated a multitude of actions connected to the activities of European companies ranging from investigations of abuses in specific sectors and analyses of legal and policy frameworks to development of guidance and tools for businesses, governments, public buyers and rightsholders.

ENNHRI submission forms a part of the [public consultation on revision of the Non-Financial Reporting Directive 2014/95/EU \(NFRD\)](#).

Based on the expertise of ENNHRI's members, this submission is focused on the aspects of the NFRD which touch upon human rights. There are four issues on which we make specific submissions:

1. Policy coherence

ENNHRI welcomes the revision of the NFRD. The NFRD adopted in 2014 represented an important first step towards increased corporate transparency as large businesses were required to report annually on risks including in relation to human rights. In addition, the 2017 European Commission Guidelines explicitly referred to [UN Guiding Principles on Business and Human Rights \(UNGPs\)](#) and [the OECD Guidelines for Multinational Enterprises](#) as key standards for reporting on human rights.

However, [an analysis of non-financial reports](#) by European businesses show that businesses do not currently report adequately on human rights.

As clearly established by the [UN Guiding Principles on Business and Human Rights](#), businesses must "know and show" respect for human rights by exercising human rights due diligence. Human rights due diligence is a process to identify, prevent, mitigate and account for how a business avoids and addresses adverse human rights impacts which it causes or contributes to, or

which are directly linked to its operations, products or services through business relationships. The process of human rights due diligence should include external communication about a company's adverse impacts on human rights and steps taken to avoid and address those.

However, corporate reporting on non-financial issues alone is not sufficient to effectively compel responsible businesses conduct. Reporting requirements such as the NFRD must therefore work coherently with other regulations in order to effectively encourage responsible business conduct and respect for human rights by businesses. This includes the [EU Commission action plan on sustainable finance](#) and forthcoming regulation on sustainability disclosures for investors, any prospective regulation mandating human rights due diligence, and a prospective EU action plan on business and human rights.

ENNHRI recommends that revisions to the NFRD are in line with the UN Guiding Principles on Business and Human Rights and are coherent with any prospective regulation mandating human rights due diligence.

2. Clarity on reporting requirements

A revised NFRD should clarify the obligations of reporting entities. The current distinction between 'social and employee matters' and 'human rights' is not useful and can cause confusion for reporting businesses, given that social and employee matters are also captured by human rights.

Further, even if a revised NFRD introduces a concept of "double materiality", materiality has a well-established meaning in financial reporting which is difficult to translate to the context of non-financial reporting without clear guidance for businesses reporting. In a business context, risks are often understood from the perspective of risk to business (for example, damage to profitability, reputational damage). What a business identifies as material shapes its actions. However, there is not a standardised way in which businesses are regularly and transparently disclosing how and what they have decided what is material, and how the business is addressing the issues identified as material. This information is important to for a range of stakeholders including ESG investors and civil society actors focused on corporate accountability.

In a human rights context, however, as clearly established by the UNGPs, businesses should focus on risks of harm to the human rights of an individual or group as the rights-holder(s) and not on the risk to the business. In fact, the UNGPs clearly state that any severe human rights impact should be reported on formally by business and goes on to define what factors make impacts severe, none of these factors relate to their impact on the business. When identifying what is

material information to report on related to human rights, focus should be on the severity of the risk of harm (to individuals rather than to the business).

Engaging with external stakeholders, especially potentially affected stakeholders and their representatives, is critical to bringing relevant information to light. There are clear human rights standards which articulate how to engage with external stakeholders to ensure their rights are respected.

Businesses can have aggregative or cumulative effect on human rights where multiple business have similar operations in the same area (for example, cumulative water use can lower the water table which impacts on farming). In line with the UNGPs and the [OECD Due Diligence Guidance for Responsible Business Conduct](#), business should report on impacts that they cause, contribute to, or are directly linked to through their business relationships and address aggregative or cumulative effects so they don't miss the 'big picture' context of business impacts on human rights and the environment.

ENNHRI recommends that the revision of the NFRD:

- Eliminates the current distinction between 'social and employee matters' and 'human rights';
- Clarifies that in the context of human rights, businesses should consider the risk of harm to the human rights of an individual or group as the rights-holder(s) rather than the risk to the business;
- Requires that businesses disclose information on their most severe human rights risks and impacts, how they have engaged relevant stakeholders in assessing these risks and how the human rights issues they have identified are being avoided and addressed;
- Requires businesses to engage with potentially affected stakeholders and/ or their representatives when identifying human rights related impacts and risks and follow human rights standards for such engagements;
- Requires business to report on aggregate or cumulative effects.

3. Standardisation of reporting

Corporate non-financial reports are prepared and presented in a variety of ways, which creates issues related to accessibility and issues in assessing and comparing reports. The capacity to access, analyse and compare such reports is important for a range of stakeholders including regulators/ oversight bodies (such as NHRIs), ESG investors and civil society actors focused on corporate accountability.

Corporate reports use a variety of different standards as a point of departure (e.g. Global Reporting Initiative standards) and their own formats when preparing their reports. As a result, corporate reports are prepared in different ways with differing formats and content. Requiring the use of a common standard, or standards, would be a large step towards standardisation in reporting. This could be achieved through a new common EU standard, or through the use of existing standards, which are in line with the UNGPs.

Corporate reports are often available on businesses' websites, however there is no official central repository where all corporate reports can be found and searched. Some civil society actors have created unofficial repositories which are useful for stakeholders interested in corporate reporting (e.g. the Alliance for Corporate Transparency, and the Corporate Human Rights Benchmark). However, an official EU repository, where businesses are required to deposit up-to-date reports, is important for a range of stakeholders including ESG investors and civil society actors focused on corporate accountability.

ENNHRI recommends that the revision of the NFRD requires that reports:

- **Are prepared and presented in a standardised manner.**
- **Utilise a common standard/ standards.**
- **Are digitised in a machine-readable format.**
- **Are deposited in an official repository, to be established and overseen by the EU.**

4. Support key stakeholders

A revised NFRD may impact on how businesses plan, prepare and publish non-financial reports. It will also have impacts on those who are using these reports, including ESG investors and civil society actors focused on corporate accountability. To ensure that businesses can fulfil the requirements in the revised NFRD and ensure that investors and civil society actors can effectively use these reports, it is important that guidance, training, and tools are designed to support them.

ENNHRI recommends that the revision of the NFRD establishes concrete measures, including guidance, training, and tools, to support key stakeholders, including businesses, investors and civil society actors, implement the revised NFRD.

