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European Commission
B-1049 Brussels, Belgium

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Dear Sirs

The British Venture Capital and Private Equity Association ("BVCA") represents the overwhelming majority of UK-based private equity and venture capital firms ("PE/VC firms"). This response to the European Commission, DG Internal Market public consultation on disclosure of non-financial information by companies is submitted on behalf of the BVCA's and Legal & Technical Committee.

Questions and BVCA response

Question 1: How would you consider the current regime of disclosure of non-financial information applicable in your country?

Quantitative response : 3/4 (scale 1 = v.poor, 2 = poor, 3 = sufficient, 4 = good, 5 = v.good)

Comment:

BVCA members primarily invest in private companies, though some also invest in public companies and some PE investments in private companies are conducted through listed vehicles or through fund of funds vehicles. This submission therefore primarily addresses responsible investment and non-financial reporting in the context of active shareholder membership of privately held companies.

The current European regulatory requirements, set out in the Fourth Company Law Directive, provide an appropriate framework around which companies have the flexibility to develop their own style of communication. When used properly, this framework should facilitate the preparation of a single, consistent and balanced narrative describing the development, performance and position of the company's business together with a description of the principal risks and uncertainties it faces (including those risks relating to corporate responsibility and sustainability matters) – articulated where appropriate with non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters.

However, non-financial factors are of a generally more qualitative nature making measurement and comparison less definitive or robust than when producing financial reports. Determining the regimes of corporate and investor disclosure and related regulatory requirements is a public policy issue. The regime for disclosure of non-financial information comes from a variety of sources, compliance with some of which is mandatory and in other cases voluntary. This therefore can create a different approach depending on the company involved.

There is no universal GAAP equivalent for non-financial reporting and no defined profession or qualification in the analysis and audit of non-financial factors. Non-financial performance measurement is generally qualitative rather than quantitative in nature and with subjective human judgement involved. There are also a large number of sources of often inconsistent guidance and voluntary standards and there is an inconsistency of mandatory reporting requirements across EU countries.

For example, the piecemeal growth in reporting requirements which has led some companies to 'bolt-on' new requirements to their existing disclosures has over time resulted in a disjointed reporting style. Equally, using the Annual Report and Accounts as a multi-function document designed to engage with a multitude of different stakeholders (including customers, employees and the wider community) can result in a loss of focus and a disproportionate amount of space devoted to promotional material at the expense of clarity on those matters necessary to understand the development performance and position of the company.

The BVCA is supportive of regularised and audited disclosure where the objective of such obligation is to promote capital market efficiency. However, for privately held companies without public markets disclosure obligations, which accounts for many portfolio companies of members of the BVCA, the disclosure of non-financial information should be a matter for a company and its shareholders and potentially other stakeholders, in particular employees, to agree. Effective monitoring and correspondent reporting of non-financial factors should not undermine but in fact enhance a company's and an investor's ability to improve financial performance.

Question 2: Have you evaluated the effects, and costs and benefits, of any current corporate disclosure of environmental and social information?

No.

Additional comments

For most portfolio companies of members of the BVCA the nature and degree of corporate disclosure has been agreed between the shareholders and executive management of the portfolio company at the outset of a relationship or introduced during ownership. This is often based on the specific requirements of the parties and the business of the portfolio company. Factors other than cost may weigh more heavily on why a disclosure is agreed to be made.

Question 3: If you think that the current regime of disclosure of non-financial information should be improved, how do you suggest that this should be done?

Consistency and comparability of non-financial information is important when comparing companies, however increased regulation and legislation may not result in the added value that can be achieved through organic development of best practice. Therefore publicising best practice examples and innovative changes in reporting is considered a suitable approach. Enforced regulation can increase the nature of "boiler plate" reporting which does not add the required value to the disclosures, yet maintains the additional cost.

Where regulation is considered necessary, a "comply or explain" approach should be considered to ensure that the information provided is relevant but not prejudicial. The incorporation of this through one global framework will also ensure consistency and improve the adoption process through reduced complexity.

Question 4: In your opinion, should companies be required to disclose the following (check all relevant boxes):

a) **Whether or not they have a CSR policy, and if they do, how they implement that policy and what the results have been.**

Yes, provided that certain thresholds of relevance and materiality are met for example turnover or number of employees etc. Where the disclosures are required without a sensible threshold, the results will be of limited value to stakeholders yet increase, unnecessarily, costs on the companies in question.

b) The principal business risks and opportunities arising from social and environmental issues, and how they are taken into account in company strategy.

No, privately owned companies should not be required to disclose such information publicly. Risk factors are generally business sensitive and their disclosure does not make for a sound and constructive business strategy

c) Key information regarding issues such as employee engagement (e.g.: employee training policy, equality and diversity, etc.); customer satisfaction (e.g.: customer loyalty); public perception of the company (e.g.: stakeholder dialogue); environmental policies (e.g.: energy efficiency, waste reduction); and innovation (e.g.: R&D expenditure)

Where this information is relevant to the investors with regard to their decision to invest in a business, then this information should be disclosed to those investors. If the company is publicly listed then this information should be disclosed publicly. There should also be a clarification that disclosure is not compulsory and companies should not be obliged to disclose information to the wider public, whilst recognising that investors have a right to this information.

Question 5: In your opinion, for an EU measure on reporting of non-financial information to achieve materiality and comparability it should be based upon (check all relevant boxes):

a. Principles
b. Key Performance Indicators (KPIs)
c. Other

A principles approach would be preferred in this area. KPI's may not be sufficiently robust to be able to compare across companies.

Question 6: In your opinion, what should be the process to identify relevant principles and/or indicators (whether general or sector-specific)?

Principles should be set based on the relevance to the specific business and company. Again a general approach here is likely to result in generic information that does not add value to stakeholders. However once these have been identified, better communication of why they are relevant and how they are being managed and monitored should occur. Again this should be through "best practice" approaches and not regulation / legislation.

With regard to existing international frameworks, it should be noted that many of these have been developed to serve different purposes by different constituents. Therefore the decision to follow any one of these frameworks may risk losing the benefits that are inherent in aspects of the other frameworks. As noted above the ideal situation is to have one framework and therefore the Commission could consider recommending a consolidation of the existing frameworks to achieve this end.

Question 7: In your opinion, should companies be required to disclose the steps they take to fulfil the corporate responsibility to respect human rights?

Yes, however, again only where this is relevant or material to the entity in question. In many cases this will not be applicable.

Question 8: In your opinion, should companies be required to disclose the risks they face and the policies they have in the field of corruption and bribery?

Where this is a significant risk it should be disclosed. However if this is not a key component of risk within the sector and business, additional disclosure adds limited value to stakeholders.

The British Private Equity and Venture Capital Association
Company number: 01697461
Company incorporated in England and Wales

Question 9: In your opinion, what companies should be required to disclose non-financial information (check only one box)?

Large companies – both listed and unlisted. We do not believe that the benefits (such as they are) of extensive disclosures by SMEs would outweigh the considerable costs.

The requirements on medium and small listed entities should be proportionate.

Question 10: In your opinion, should institutional investors be subject to specific or additional disclosure requirements, for example to disclose whether and how they take into account environmental and social issues in their investment decisions?

We believe that there should be a distinction between asset owners and asset managers and that the term “institutional investors” needs additional clarity. It may be appropriate to require additional disclosure of certain “institutional investors” for example pension funds, for the benefit and protection of their members.

However in general investors should not be subject to such disclosures other than as required by their own investors and members.

Question 11: In your opinion, should European policy promote the concept of "integrated reporting"?

Yes, provided that this generates more user friendly communications which cover the relevant and material financial and non financial factors and facilitate comparability.

Integrated reporting is more cost effective than separate non-financial or CSR reports, which can also be more time consuming in preparation. Furthermore integrated reporting helps to ensure that environmental, social and governance issues are considered and acted upon as part of the management decision process.

Question 12: In your opinion, should disclosed non-financial information be audited by external auditors?

Non-financial information included in reporting should be reliable. In order to seek to ensure that this is the case, some form of assurance on the non financial aspects may be required. However it is possible that this is not in the same degree and frequency as currently required of financial audits and auditors may not be competent or the right persons to assess non financial information.

The frequency and extent of assurance must take into account what existing environmental social and governance (ESG) processes or achievements exist within the portfolio company.

Companies with a poor compliance record and lack of formal systems or 3rd party assessment would perhaps need greater attention.

The type of industry, location and the ESG issues the company faces will also need to be considered.

If you would like to discuss any aspect of our submission, please contact me in the first instance on +44 (0)20-7111 2222 or at simon.witney@sjberwin.com.

Yours faithfully

Simon Witney
Chair – BVA Legal & Technical Committee