

European Commission
DG for Financial Stability, Financial Services and
Capital Markets Union (Financial Markets: Corporate
reporting, audit and credit rating agencies)

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Subject

Re. Consultation Document
strengthening of the quality of corporate
reporting and its enforcement

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To whom it may concern,

The Confederation of Netherlands Industry and Employers (known as VNO-NCW) welcomes the opportunity to provide its views on the Consultation Document as well as call for evidence regarding strengthening of the quality of corporate reporting and its enforcement, as issued by the European Commission on 12 November 2021.

VNO-NCW emphasizes that the public interest is served by proper financial reporting of companies. VNO-NCW will limit this response to the aspects applicable to Dutch preparers of corporate reporting and respond to main points. Since, interventions focused at a link in the chain of corporate reporting will affect the entire chain, this response will also touch upon coherent subjects in the Consultation Document such as the accessibility of auditors.

No need for further modification of the EU framework for corporate reporting given current legislative developments

First, VNO-NCW believes that caution should be exercised with new or simultaneous legislative adjustments in the field of corporate reporting, also

considering the significant consequences for all stakeholders involved.¹ Given the current European legislative developments, VNO-NCW does not feel the need to further modify the EU framework for corporate reporting at this moment in time and prefer to wait until above developments have materialized.

Delineation and safeguarding of roles within the corporate governance framework is important

Regarding, the key features of the EU framework on corporate governance as mentioned in question 7 of the Consultation Document, VNO-NCW stresses that in the Netherlands corporate governance is in full focus. Additional to European and national legal requirements also compliance with the Dutch Corporate Governance Code is undiminished high.²

VNO-NCW underlines the importance of the audit committee but is cautious when it comes to some of the proposed actions in question 9. Notably, in the Netherlands the audit committee is not a separate corporate body but is a committee of the supervisory board, which means that the supervisory board - in principle - remains collectively responsible for any preparatory work undertaken by the audit committee. In corporate governance initiatives differences in legal systems in the Member States should be taken into account.

Furthermore, VNO-NCW believes that delineation and safeguarding of roles within the corporate governance framework is necessary for those roles to be efficient and of high quality. The audit committee fulfils a supervisory role within the entity and therefore VNO-NCW is skeptical about extending this supervisory role towards a more operational or managerial role by for example providing assurance (question 9 sub g) or strengthening the external position (question 9 sub h). With respect to question 9 sub c, it is noted that increasing the responsibilities of specific board members and their liability on corporate reporting is not in line with the key feature of the EU framework on corporate governance of collective responsibility of the members of the management body.

¹ Currently, European legislation influencing corporate reporting and the reporting entity is in development. Changes of the Transparency Directive (2013/50/EU) and delegated act (2018/815/EU) on the European Single Electronic Format, the legislative proposal on sustainable corporate governance and the EU Directive Corporate Sustainability Reporting are just a few recent examples influencing the corporate reporting framework.

² See www.mccg.nl/english for the English translation of the Dutch Corporate Governance Code and the Monitoring Report on compliance with de Code in Financial Year 2020. The average compliance rate with the provisions is 93.6%.

Moreover, VNO-NCW is doubtful about the effectiveness of the proposals regarding extension of the responsibilities and liabilities of the board as mentioned in question 9 and the preface of part II of the Consultation Document. Especially, the measures regarding increased responsibility and transparency on risk management, internal control systems including controls for risks of fraud and going concern raise concerns (question 9 sub d and e).

VNO-NCW believes these measures will result in juridification of corporate reporting and increased administrative burden and VNO-NCW questions whether these proposals strengthen the quality of the corporate governance framework. Additional to this, juridification may lead to more spending control efforts and investments on more and heavier reporting and evidencing of decisions rather than a better control underneath. Moreover, administrative burden might be traded off against 'lower' level or (considered) less risky business processes and/or lower results, which need to be in line with stakeholder expectations. Consequently, focus will be on only high/most critical aspects, not directly leading to a better control across the board. Furthermore, risk taking is an inherent element of entrepreneurship and fortunately frauds and bankruptcies following unclear reporting are uncommon.³ Recent research in the Netherlands shows that at most 0.31 % of all reporting entities that require a statutory audit are affected by bankruptcies, after which researchers conclude that is a relatively rare event. Therefore, VNO-NCW believes strengthening of the reporting obligations of all reporting entities does not seem appropriate to solve a problem affecting only a fraction of the entities in scope.

No indication of systematic shortcomings of corporate reporting in the Netherlands

Lastly, VNO-NCW has no indication of any systematic shortcomings of corporate reporting in the Netherlands. Even though generally accepted indicators to measure the quality of corporate reporting might seem attractive and informative in concept, at current there are no effective indicators. If such indicators are ever developed, VNO-NCW believes that these are precarious. Context is needed to be able to interpret indicators appropriately which undermines the equality and accessibility of indicators. Moreover, according to VNO-NCW, assemblance of corporate reporting quality indicators undermines the value of a commonly used indicator of corporate reporting quality: the independent auditors report. VNO-NCW underlines the importance of accessibility of audit services for reporting entities and, in that

³ Research published in 2021 by T. Bosman, M. van der Kuip and W. Janssen entitled: 'Bankruptcy and Auditor's Reporting in The Netherlands', <https://foundationforauditingresearch.org/files/papers/bankruptcy-and-auditors-reporting-in-the-netherlands-manuscript.pdf>

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perspective, would like to point out recent Dutch research regarding joint audits that indicates that a joint audit only has limited advantages and according to the researchers does not contribute to increased audit quality.⁴

We will be pleased to provide any further information that you may require.

Yours sincerely,

Mr. Rob J. Mulder
Director

⁴ Research conducted by the Dutch Erasmus Competition and Regulation Institute published in October 2021 entitled 'Effects of and experiences with joint audit', https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2021Z21770&did=2021D46326