

# AMNESTY INTERNATIONAL PUBLIC STATEMENT

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## **New Directive marks important step towards ensuring EU companies "know and show" respect for human rights, but member states still need to demonstrate true commitment to business and human rights protections**

The European Parliament has recently approved a Directive on the disclosure of non-financial information by EU companies (Directive). The Directive, expected to be formally adopted in July, will require certain large companies to report annually on their human rights, environmental and social impacts. Over the past two years, Amnesty International and the European Coalition for Corporate Justice (ECCJ) have made a significant contribution to this process in the hope of achieving clear and comprehensive legislation that would require a wide range of EU companies to report on these issues. Amnesty International welcomes the important advances that the Directive will make in this respect. We are however disappointed at the limited number of companies subject to the legislation, which will have an impact on its overall effectiveness. We are also surprised at attempts by member states within the European Council to weaken the reporting requirements in the Directive, which undermines efforts to ensure that companies respect human rights.

The Directive marks a significant achievement in that it is the first time that EU companies will be legally required to report publicly on the human rights, environmental and social impacts of their global operations, as well as their due diligence procedures for identifying, preventing, mitigating and addressing those impacts. The Directive is an important step towards ensuring that EU companies "know and show" that they respect human rights. Various international standards emphasize that due diligence and public and comprehensive reporting to a variety of stakeholders are vital for these purposes.<sup>1</sup>

The Directive will require EU "public interest entities"<sup>2</sup> with more than 500 employees to provide an annual written report on human rights, environmental and social issues to give an understanding of their impact in each of these areas. The Directive sets out the minimum information to be provided in the report. This includes a description of the entity's policies in each of the above areas (including its due diligence procedures) and the results of those policies. It also includes a description of the principal risks of the entity's business in each area and how it manages those risks. The information provided must cover the entity's own operations as well as, where "relevant and proportionate",<sup>3</sup> its supply chains and business relationships. If the entity does not have a policy in any of these areas, it must provide a clear and reasoned explanation for not having one in place.

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<sup>1</sup> See, for example the UN Guiding Principles on Business and Human Rights, Principles 15, 17 and 21 and the OECD Guidelines for Multinational Enterprises (2011 edition), Part I (Chapters III and Chapter IV (paragraph 45)) and Part III (Commentary on Disclosure).

<sup>2</sup> "Public interest entities" are listed companies, credit institutions, insurance undertakings and any other entity designated by an EU member state as a public interest entity (for example because they are of significant public relevance due to the nature of their business, size or number of employees). See Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013, Article 2(1).

<sup>3</sup> This term and what it means in practice for reporting companies is discussed further below.

While acknowledging the advances made in the Directive, Amnesty International is disappointed with the reduced number of companies it applies to and at attempts within the European Council to weaken the reporting requirements. If the Council's proposals had been successful, the Directive would have required a relatively small number of EU companies to provide a limited amount of information on how human rights, environmental and social issues may affect them – falling far below international standards and leaving out issues relevant to understanding the company's impact on individuals and communities. This suggests that, despite their obligations under international law and endorsement of various international standards on business and human rights, EU member states are still reluctant to adopt laws that would legally require companies to "know and show" that they respect human rights.

As a result of these actions within the Council, the scope of the Directive is more limited than expected and there are potential loopholes in the reporting requirements. Amnesty International urges member states to effectively address these issues when implementing the Directive. Importantly, however, these actions within the Council did not undermine the minimum requirement in the Directive that companies give an understanding of their human rights, environmental and social impacts.

The European Commission's original legislative proposal would have required around 18,000 EU companies to report on their human rights, environmental and social policies and risks as well as the results of those policies and how they manage those risks. Negotiations between the European Parliament and the European Council to agree a compromise text began late last year. The Parliament aimed to build on the Commission's original proposal by clarifying the information that companies were expected to provide and bringing the reporting requirements more into line with international standards on business and human rights. The Parliament therefore proposed that, when reporting on policies and risks, companies be specifically required to provide details of their due diligence procedures and principal risks with respect to not only their own operations but also their supply chains and business relationships. They also proposed that companies be required to report on specific, significant incidents that had occurred in the relevant reporting year. In providing this information, companies would have been required to rely on international standards such as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. Such international standards and related guidelines provide vital assistance on how to implement due diligence procedures and how to report on human rights, environmental and social risks and impacts.

Amnesty International regrets that the European Council's position was more regressive than that taken by the European Parliament. During negotiations, attempts were made within the Council to weaken the Commission's and the Parliament's proposals:

- It was insisted that the Directive apply only to "public interest entities" with over 500 employees – covering about 6,000 EU companies.<sup>4</sup>
- The Council rejected the Parliament's proposal to report on significant incidents.
- With respect to supply chains and business relationships, the Council maintained that reporting on due diligence procedures and risks only be required if "relevant and proportionate". The Directive provides no guidance as to what this means – creating a lack of clarity as to what information companies should provide.

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<sup>4</sup> This call was led by the UK government (see Richard Howitt, 'The EU law on non-financial reporting – how we got there' The Guardian (16 April 2014), available at: <http://www.theguardian.com/sustainable-business/eu-non-financial-reporting-how-richard-howitt>). European Coalition for Corporate Justice, 'Why is the corporate reporting reform important?' (26 February 2014), available at: [www.corporatejustice.org/IMG/pdf/media\\_briefing\\_26-02-2014.pdf](http://www.corporatejustice.org/IMG/pdf/media_briefing_26-02-2014.pdf)

- Additionally, the Council insisted that companies be given flexibility as to whether or not they rely on international standards on business and human rights – making this optional.

Prior to these negotiations, the Council had also introduced an "opt-out clause" that would have given companies wide discretion not to report. It had also proposed that companies only report on human rights, environmental and social issues to the extent necessary to give an understanding of the company's own development, performance or position. This last proposal was unsuccessful. The Parliament reduced the scope of the opt-out clause and insisted that companies also report on their impact on others.

Moving forward therefore – what information should companies be providing in practice to comply with the reporting requirements?

As described above, the Directive sets out certain minimum information that must be included in the written report. This means that companies will still need to provide additional information if necessary to give an understanding of their human rights, environmental and social impacts. This would include details of significant human rights incidents that have occurred in the relevant reporting year. It would also include details of consultations with affected individuals and communities at both the risk assessment and management phases of any project. Similarly, companies will need to report on due diligence procedures and risks with respect to their supply chains and business relationships where "relevant and proportionate" to understanding their human rights, environmental and social impacts. Finally, companies should be using international standards on business and human rights when reporting to ensure that they give an accurate and comprehensive understanding of their risks and impacts.<sup>5</sup>

In the next two years, the Directive will be implemented into the national law of member states and the European Commission will publish non-binding guidelines for companies on the reporting requirements in the Directive. Amnesty International urges EU member states to ensure that the guidelines and national legislation are clear and comprehensive, requiring a wide range of companies within their jurisdiction to report on their human rights risks and impacts and due diligence procedures in accordance with international standards. National legislation should include robust monitoring and enforcement mechanisms to ensure that companies are complying with the reporting requirements. As we approach the third anniversary of the endorsement by the UN Human Rights Council of the Guiding Principles on Business and Human Rights, states and regional bodies must take concrete action to ensure that international standards on business and human rights are made effective so that individuals and communities can enjoy greater human rights protections.

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<sup>5</sup> We would also note that, although member states can permit companies not to disclose information on impending developments or matters in the course of negotiations, this opt-out clause is only to be used in exceptional circumstances and must not be used if it would prevent a company from giving a fair and balanced understanding of the impact of its activities.