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Implementation in Denmark of EU Directive 2014/95/EU on the disclosure of non-financial information

The Danish Financial Statements Act concerning CSR reporting

On 16th December 2008 the Danish parliament adopted “Act amending the Danish Financial Statement Act (Accounting for CSR in large businesses)” including around 1,100 large undertakings (cf. <http://csrgov.dk/legislation>)

The businesses that are covered by the statutory requirement have to state:

1. The business’ CSR policies, including any standards, guidelines or principles for CSR used.
2. How the business translates its CSR policies into action, including any systems or procedures used.
3. The business’ evaluation of what has been achieved through the CSR initiatives during the financial year, and any expectations it has regarding future initiatives.

If the business has not formulated any CSR policies, this must be reported.

On 12th June 2012 the Danish parliament adopted an amendment to the Financial Statement Act so that businesses in the future have to expressly account for the topics human rights and climate impact reduction regardless of whether or not these are included in the businesses’ CSR policies.

Implementation of EU Directive 2014/95/EU on the disclosure of non-financial information

On 21st May 2015, the Danish Parliament (Folketinget) adopted an amendment to the Danish Financial Statements Act¹, including new requirements for the disclosure of non-financial information, hereby implementing EU Directive 2014/95/EU.

The amendment entails that the current provision of the Danish Financial Statements Act concerning CSR reporting that includes around 1,100 undertakings will be adjusted in accordance with the Directive's requirements.

The new requirements will have effect for financial years commencing on or after 1 January 2016 for approximately 50 undertakings (large PIEs). For the other approximately 1,050 undertakings that are today subject to the regulations of the Danish Financial Statements Act concerning CSR reporting, the requirements enter into force with effect from financial years commencing on or after 1 January 2018. However, as of 1 January 2016 all of the approximately 1,100 large undertakings must not only specifically report on human rights and climate issues, but also specifically report on environmental conditions, if the undertaking has policies in the respective areas.

¹ <http://www.ft.dk/samling/20141/lovforslag/L117/index.htm>

Below is an English translation of the part of the proposed Bill that concerns the implementation of Directive 2014/95/EU on the disclosure of non-financial information, containing the following sections:

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1. New section of the Act on corporate social responsibility (CSR) reporting (Section 99 a)

The new EU regulations are implemented in the current Section 99 a of the Danish Financial Statements Act, which is worded as follows:

"Section 99 a. Large undertakings must supplement the Management's Review with a corporate social responsibility (CSR) report, cf. (2)-(9). Corporate social responsibility entails that undertakings incorporate considerations for, *inter alia*, human rights, social conditions, environmental and climate issues, as well as anti-corruption measures, in their business strategy and business activities.

(2) As a minimum, the CSR report must include the following, cf. (3), (6) and (7), however:

- 1) A brief description of the undertaking's business model.
- 2) A description of the CSR policies pursued by the undertaking, including any standards, guidelines or CSR principles applied by the undertaking. As a minimum, environmental policies, including measures to reduce the climate impacts of the undertaking's activities, must be disclosed, as well as social conditions and employee conditions, respect for human rights, and measures to fight bribery and corruption. For each policy area it must be stated whether the undertaking has a policy for the area in question, and the nature of the policy.
- 3) For each policy area, cf. 2), it must be stated how the undertaking puts its CSR policy into practice, and any systems or procedures in this respect must be described. Details must also be given of the due diligence processes applied, if the undertaking uses such processes.
- 4) Details must be given of the principal risks related to the undertaking's business activities, including, where relevant and proportionate, in relation to its business relationships, products or services which are likely to entail a particular risk of adverse impacts in the areas stated in 2). This must include details of how the undertaking manages the risks in question. Information must be provided for each policy area.
- 5) Details must be given of the undertaking's use of any non-financial key performance indicators relevant to the specific business activities.
- 6) Details must be given of the undertaking's assessment of the results it has achieved as a result of its CSR initiatives during the financial year, and any future expectations of these initiatives. Information must be provided for each policy area, cf. 2).

(3) Where the undertaking does not pursue CSR policies in the areas stated in (2) 2), this must be disclosed in the Management's Review, including the grounds, for each of the areas stated.

(4) The report must be presented as part of the Management's Review.

Instead, however, the undertaking may present the report 1) in a supplementary report to the Annual Report, cf. Section 14, to which reference is made in the Management's Review, in accordance with regulations issued pursuant to (8), first sentence; or 2) on the undertaking's website, to which reference is made in the Management's Review, in accordance with regulations issued pursuant to (8), second sentence.

(5) For undertakings that present consolidated financial statements it is sufficient to provide the information stated in (1)-(3) for the overall Group.

(6) A subsidiary that is part of a Group may omit this information from its Management's Review if a parent undertaking fulfils the disclosure requirements in accordance with (1)-(3).

(7) An undertaking may refrain from preparing a CSR report in accordance with (2) if the undertaking discloses its CSR policies in accordance with international guidelines or standards that include the information stated in (2). Subsection 3 will apply in the same way if the information does not cover the policy areas stated in (2).

(8) The Danish Business Authority lays down more detailed regulations concerning the publication of the CSR report in a supplementary report to the Annual Report, as well as the obligations of auditors with regard to the information published therein, cf. (4), 1). The Danish Business Authority lays down more detailed regulations concerning the publication of the CSR report on an undertaking's website, including regulations concerning the undertaking's updating of the information on the website, and the obligations of auditors with regard to the information published on the website, cf. (4), 2).

(9) The Danish Business Authority lays down more detailed regulations for the terms on which an undertaking can report on CSR according to international guidelines or standards."

2. Remarks to the Bill

2.1. General remarks

Corporate Social Responsibility (CSR) reporting

Current law

Today, the Danish Financial Statements Act solely includes the Danish rules for CSR reporting, cf. Section 99 a, which concern around 1,100 undertakings in total. The requirements of the Danish Financial Statements Act apply to large undertakings that are subject to the requirements in accounting class C, and to all undertakings that are subject to the requirements in accounting class D (i.e. to listed companies and to state-owned limited liability companies, irrespective of their size). The same reporting requirement applies to institutional investors, mutual funds and other listed financial enterprises (banks and insurance companies, etc.) that are not subject to the Danish Financial Statements Act. The reporting requirements for these undertakings are laid down in Executive Orders issued by the Danish Financial Supervisory Authority, cf. Executive Order no. 1043 of 5 November 2009 on Financial Reports for Mutual Funds and Special-Purpose Associations, etc., Executive Order no 281 of 26 March 2014 on Financial Reports for Credit Institutions and Investment Firms, et al., Executive Order no. 112 of 7 February 2013 on Financial Reports for Insurance Companies and Lateral Pension Funds, and Executive Order no. 91 of 27 January 2014 on Financial Reports for Arbejdsmarkedets Tillægspension (the Danish Labour Market Supplementary Pension Fund).

The current rules entail that large undertakings must report on:

- 1) their CSR policies;
- 2) how the policies are put into practice; and
- 3) the undertaking's assessment of what has been achieved during the year as a consequence of its CSR work (results), and any expectations of the future.

If the undertaking does not have a CSR policy, this must be stated. Since the 2013 financial year, undertakings have also been specifically required to consider climate issues and human rights. If the undertaking does not have policies for climate issues or human rights, this must be disclosed.

Content of the proposal

An amendment of the new Accounting Directive has been adopted, requiring member states to specify more detailed requirements of undertakings' CSR reporting. The EU regulations are based on the same principles as the Danish statutory requirements. Common to both sets of regulations is their fundamental flexibility, which e.g. entails that the undertakings concerned can determine on a voluntary basis whether to have a CSR policy, and solely obliged to be open about the choices they make.

The Directive obliges the member states to include, as a minimum, the category of "public-interest entities" with at least 500 employees. So far, the Danish Financial Statements Act has not used the term "public-interest entities", but under the Financial Statements Act undertakings that are subject to accounting class D - i.e. state-owned limited liability companies and listed companies - are deemed to be of public interest. There are approximately 50 state-owned limited liability companies and listed companies with at least 500 employees out of the approximately 1,100 companies in total that are currently subject to the applicable CSR reporting regulations, cf. Section 99 a of the Danish Financial Statements Act. The Directive furthermore concerns companies that are subject to supervision by the Danish Financial Supervisory Authority, and that are covered by the aforementioned definition of size.

The new Directive requirements are fundamentally based on the same flexible model as the current Danish regulations. In accordance with the new EU regulations, undertakings may continue to refrain from reporting matters that are not relevant for the undertaking in question. In certain areas, however, the new EU requirements go further than the current Danish requirements in terms of the information required to be disclosed. A new aspect is that, according to the Directive, the undertakings in question must consider environmental, social and employee-related issues, as well as measures to fight bribery and corruption. In addition, the undertakings must also briefly describe the undertaking's business model, primary risks, any "due diligence" processes implemented, and any key performance indicators. Furthermore, in contrast to the current Danish regulations, the undertakings concerned cannot merely state that they do not have a CSR policy. According to the Bill, the undertakings must give reasons for not having a policy, cf. the "comply or explain" principle.

As this concerns flexible EU regulations that are fundamentally in line with the current Danish regulations in Section 99 a of the Danish Financial Statements Act, it is proposed that the Directive's requirements be introduced for all large undertakings that are currently subject to Section 99 a of the Danish Financial Statements Act. It is thus proposed that the provision be adjusted in accordance with the Directive's requirements. This is assessed to impose a very limited administrative burden, while also augmenting the transparency of Danish undertakings' work on sustainability and CSR. It is proposed that the regulations for the largest undertakings enter into

force at the same time as the Bill, while the remaining large undertakings have a two-year transition period during which to adjust to the new requirements. This means that the stricter new EU requirements concerning CSR reporting are proposed to include approximately 50 undertakings with effect for financial years commencing on or after 1 January 2016. For the other approximately 1,050 undertakings that are today subject to the regulations of the Danish Financial Statements Act concerning CSR reporting, it is proposed that the requirements enter into force with effect from financial years commencing on or after 1 January 2018. It is proposed, however, that as of 1 January 2016 all of the approximately 1,100 large undertakings must not only specifically report on human rights and climate issues, but also specifically report on environmental conditions, if the undertaking has policies in the respective areas.

The background to the last-mentioned proposal is that a repeal of the green accounting obligation is planned, cf. Executive Order no. 210 of 3 March 2010 on certain undertakings' submission of environmental information. The proposal must thus be viewed as part of the overall regulation of undertakings' reporting of their environmental conditions, in order to achieve greater environmental effects, with a reduced administrative burden.

The Danish Ministry of the Environment has stated that an evaluation indicates that today the green accounts no longer yield added value that is in reasonable proportion to the undertakings' administrative burden. Around one fourth of the undertakings that report their green accounts today will still be required to report annually to the EU's Pollutant Release and Transfer Register (PRTR) on their principal emissions and transfers of problematic substances from the undertaking. Undertakings that are no longer required to submit green accounts will experience a direct reduction of the administrative burden. For undertakings that do not currently report green accounts, but are subject to the CSR reporting requirement in accordance with Section 99 a of the Danish Financial Statements Act, this will be a new requirement. It is assessed that the administrative burden of specifically considering environmental issues in their CSR reports will be very limited for the around 1,100 undertakings that are subject to Section 99 a. Furthermore, a survey by the Danish Business Authority in 2014 shows that the majority of the undertakings subject to Section 99 a that have a CSR policy already submit environmental reports at the present time (96%).

For further details of the proposed amendments to Section 99 a, see the special remarks concerning Section 1, 130) of the Bill.

2.2 Remarks concerning the individual provisions of the Bill

To 130) (Section 99 a of the Danish Financial Statements Act)

In accordance with the current Section 99 a of the Danish Financial Statements Act, large undertakings that are subject to accounting class C must supplement the Management's Review with a CSR report. Section 99 a also applies to undertakings subject to accounting class D (state-owned limited liability companies and listed companies), irrespective of the size of the undertaking, cf. Section 102(1).

When Section 99 a was added to the Danish Financial Statements Act in 2009, this was a national requirement that was not governed by a Directive.

Since then, regulations have been adopted concerning CSR reporting in Amendment Directive 2014/95/EU of 22 October 2014, which adds a provision to Article 19 a of the new Accounting Directive, and which the member states are obliged to implement.

To a great extent the regulations in the Directive correspond to the current regulations in Section 99 a, but also deviate from these in a number of respects, which are described in further detail below.

As a minimum, the member states must implement the Directive's requirements for large public-interest entities. In the Directive, large undertakings are specified as undertakings that, as at the balance sheet date, had an average number of full-time employees during the financial year of or in excess of 500.

It is proposed that the Directive's requirements be implemented in a new wording of Section 99 a, which will apply to all of the undertakings that are currently subject to Section 99 a, but so that the Directive's requirements are implemented in two stages for the undertakings concerned.

For undertakings subject to accounting class D that, as at the balance sheet date, had an average number of full-time employees during the financial year of or in excess of 500, it is proposed that the new wording of Section 99 a take effect for financial years commencing on or after 1 January 2016, cf. Section 6(5), fourth sentence of the Bill.

For large undertakings that are subject to accounting class C as well as for undertakings that are subject to accounting class D that, as at the balance sheet date, had an average number of full-time employees during the financial year of below 500, it is proposed that the new wording of Section 99 a take effect for financial years commencing on or after 1 January 2018, cf. Section 6(5), first sentence of the Bill.

Until the new Section 99 a takes effect for these undertakings as stated above, Section 99 a as hitherto in force will apply. For financial years beginning on 1 January 2016 or later, the report in accordance with Section 99 a(3) must also be supplemented with details of environmental policies, if the undertaking has such environmental policies, cf. Section 6(5), second and third sentences. This means that if the undertaking has environmental policies, including for the reduction of the climate impact of its activities, the report must be supplemented with explicit information concerning these policies. If the undertaking does not have such policies, this must be stated in the Management's Review.

Like the current Section 99 a, the new Section 99 a also applies to parent companies that present consolidated accounts. Reference is made to Section 1, 161) of the Bill concerning the amendment of Section 128(2). Reference can also be made to Section 6(6) of the Bill and the relevant remarks concerning entry into force, etc.

As stated, it is proposed that the Directive's requirements be implemented in a new wording of *Section 99 a*.

Article 19 a(1) of the Directive entails that in their Management Reviews the undertakings in question must include a non-financial statement with certain specified information concerning the undertaking's CSR, as described below.

According to the Directive's provision, the information must be submitted to the extent necessary to understand the undertaking's development, performance, position and impact on the undertaking's activities. This concerns how the CSR report must be related to the undertaking's core activities, and how the information must be disclosed to the extent that is relevant to understanding the development in and the impact of the core business activities. In the proposed Section 99 a, this is reflected in how the report must include CSR information in terms of the undertaking's business strategy and business activities (business-driven CSR).

The proposed new wording of Section 99 a must also be viewed in the light of Section 12 of the Danish Financial Statements Act, which includes a general requirement that the Annual Report

must be drawn up so as to support users of the financial statements in their financial decision-making. Users of the financial statements comprise a wide circle of stakeholders, including companies, organisations, public authorities, employees, shareholders, customers, suppliers and lenders, etc. whose financial decisions can normally be expected to be influenced by an Annual Report. The decisions in question may, for example, concern the investment of the financial statements user's own resources, the management's administration of the undertaking's resources, and the distribution of the undertaking's resources.

Like the current provision, the proposed *Section 99 a(1), first sentence* states that the undertaking must supplement the Management's Review with a CSR report.

In accordance with the *second sentence*, corporate social responsibility means that undertakings must incorporate consideration of, for instance, human rights, social conditions, environmental and climate issues, as well as measures to fight corruption, in their business strategy and business activities. The proposed definition is thus identical with the definition in the current provision, with the difference that "voluntarily" is no longer stated explicitly.

In recent years, new and revised CSR guidelines and principles have appeared. An undertaking demonstrates corporate social responsibility and creates value for both the undertaking and society by managing social, environmental and economic challenges in dialogue with its stakeholders and in accordance with internationally recognised guidelines and principles. Corporate social responsibility fundamentally concerns undertakings' responsibility for their impact on society. Corporate social responsibility is exercised in order to create the greatest possible shared value for the undertaking's owners/shareholders and other stakeholders, as well as society at large, and to identify, prevent and mitigate any adverse impacts. In other words, CSR concerns maximising undertakings' positive value creation, as well as minimising current and potential negative impacts arising from the business activities. Recognised international guidelines and principles include the UN Guiding Principles on Business and Human Rights, the UN Global Compact, the UN-supported Principles for Responsible Investment (PRI), the OECD's Guidelines for Multinational Enterprises, the ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, ISO standards such as the guiding ISO 26000 standard on corporate social responsibility, and the Global Reporting Initiative (GRI), etc.

The proposed *Section 99 a(2)* states which information the report must contain, as a minimum. In some respects, these reporting requirements deviate from the reporting requirements in the current Section 99 a, as explained below.

According to the proposed *Section 99 a(2), 1*), a brief description of the undertaking's business model must be given. The current Section 99 a, on the other hand, does not include a requirement to describe the undertaking's business model.

The requirement implements Article 19 a(1)(a) of the new Accounting Directive, cf. Amendment Directive 2014/95/EU. The Directive does not specify which requirements are made of the description of the undertaking's business model, but merely states that a brief description must be given. The undertaking thus itself defines the content and degree of detail of the information provided concerning the business model.

As the purpose of providing information concerning the undertaking's business model is that a description of the business model will contribute to understanding the link between strategy and (core) business and the undertaking's approach to CSR, the description of the business model should, however, typically include such topics as business areas, products and services.

The new *Section 99 a (2), 2*) states that information on the undertaking's CSR policies must be given. This must include information on any standards, guidelines or CSR principles used by the undertaking, as stated in the current *Section 99 a(2), 1*). Policies should be interpreted broadly as the undertaking's internal guidelines, objectives or other documents that describe how the undertaking works with CSR.

In addition, the new *Section 99 a(2), 2*) describes which specific policy areas, as a minimum, must be reported on. These deviate from the current *Section 99 a* in certain areas.

According to the current *Section 99 a*, undertakings must report on their CSR policies, and specifically their policies concerning climate issues and human rights, cf. *Section 99 a(2), 1*), and (3).

According to the new *Section 99 a(2), 2*), in accordance with Article 19 a(1) of the Directive, as a minimum the following issues/policy areas must be reported on: Environmental conditions, including climate issues; social conditions and employee conditions; respect for human rights; and measures to fight bribery and corruption.

Preamble no. 7 to the Amendment Directive details which information the respective policy areas should or may contain. Examples of information concerning environmental conditions include: details of current and foreseeable impacts of an undertaking's operations on the environment, and, as appropriate on health and safety, the use of renewable and/or non-renewable energy, greenhouse gas emissions, water use and air pollution.

According to the proposal, environmental conditions and climate issues must be seen as two separate policy areas. However, the undertaking may choose to allow the information on climate issues to be included as part of the undertaking's environmental reporting.

As examples of reporting of social and employee-related matters, preamble no. 7 names reporting of actions taken to ensure gender equality, implementation of fundamental conventions of the International Labour Organisation, working conditions, social dialogue, respect for the right of workers to be informed and consulted, respect for trade union rights, health and safety at work and the dialogue with local communities, and/or the actions taken to ensure the protection and the development of those communities. With regard to human rights, including employee rights, and measures to fight bribery and corruption, the non-financial statement could include information on the prevention of human rights abuses and/or on instruments in place to fight bribery and corruption.

While the topics are thus expanded in the new *Section 99 a (2), 2*) in relation to the current *Section 99 a*, as in the current *Section 99 a* overall, principle-based approach is taken. However, as for the current *Section 99 a*, it is not sufficient to solely state that the undertaking has a policy for a given area, such as the environment. The undertaking must also report on the content of the policy in question – although the undertaking itself determines the degree of detail.

According to the proposed new *Section 99 a(2), 3*), as stated in 2), it must be stated for each policy area how the undertaking puts its CSR policy into practice, including information on any due diligence processes applied, if the undertaking uses such processes. Since it must be stated how the undertaking puts its CSR policies into practice, the statutory requirement cannot be fulfilled merely by stating negatively that the undertaking does not put its policies into practice. The undertaking must describe positively how the policies are implemented in practice, although the undertaking itself can determine the degree of detail reported.

According to the current *Section 99 a (2), 2*), the undertaking must report any systems or procedures, although no requirements are made concerning reporting of due diligence processes.

The background to the requirement of a description of due diligence processes in the new Section 99 a(2), 3) is that Article 19 a(1) (b) of the new Accounting Directive, cf. Amendment Directive 2014/95/EU, requires that the description of the undertaking's policies must include a description of "due diligence processes implemented".

According to the Directive, the undertakings are thus not obliged to apply due diligence processes, but for each policy area are obliged to report the use of such processes, if they are applied by the undertaking. In the new Section 99 a, the term "due diligence" is used. The Directive does not expand on which information the undertaking must provide concerning the due diligence processes applied. The undertaking must therefore perform a concrete assessment of the information that should be submitted with regard to its CSR policies, with due consideration of reporting that is relevant and proportional to the undertaking's activities.

The current Section 99 a does not operate directly with the due diligence concept. On the other hand, the concept of due diligence is defined in the international CSR guidelines such as the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights – both adopted in 2011 – of which the concept is a central element. The Directive refers to the aforementioned international guidelines. Act no. 546 of 18 June 2012 on a Mediation and Complaints-handling Institution for Responsible Business Conduct is also based on these guidelines [the institution is also the Danish National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises].

In accordance with the proposed new *Section 99 a (2), 4)*, the principal risks related to the undertaking's business activities must be reported. This includes, where relevant and proportional, reporting information relating to the undertaking's business contacts, products and services that entail a special risk of negative impacts on the policy areas stated in (2), 2), as described above.

The current Section 99 a does not impose an equivalent obligation to report the significant risks relating to the undertaking's business activities. The concepts – i.e. business contacts, adverse impacts, etc. – are defined in both the OECD's Guidelines for Multinational Enterprises (2011) and the UN Guiding Principles on Business and Human Rights (2011), to which the Directive refers, and on which the Act on the Mediation and Complaints-handling Institution for Responsible Business Conduct is also based.

The requirement in the new Section 99 a (2), 4) implements Article 19 a (1) (d) of the Directive. The delineation of the significant risks, cf. the proposed new Section 99 a (2), 4), must depend on a concrete assessment of significance. Preamble no. 8 to the Amendment Directive defines that the undertakings should provide adequate information in relation to matters that stand out as being most likely to bring about the materialisation of principal risks of severe impacts, along with those that have already materialised. The severity of such impacts should be judged by their scale and gravity. The risks of adverse impact may stem from the undertaking's own activities or may be linked to its operations, and, where relevant and proportionate, its products, services and business relationships, including its supply and subcontracting chains.

According to the proposed new *Section 99 a (2), 5)*, the undertaking must provide details of the use of non-financial key performance indicators that are relevant for specific business activities, if the undertaking uses such indicators.

According to the current Section 99 a, no requirement is made concerning reporting of the undertaking's possible use of key performance indicators.

The requirement to report the use of any key performance indicators in the proposed new Section 99 a (2), 5), is based on the Directive's Article 19 a(1) (e), which requires that undertakings

must report relevant non-financial key performance indicators (KPI) that are relevant to the undertaking's specific business activities.

Key performance indicators are a generally known and used instrument for the purpose of measuring an undertaking's performance for a given objective concerning specific business activities. These indicators may also be applied to non-financial areas, such as environmental and social conditions.

The Directive does not specify how the use of the undertaking's key performance indicators is to be described.

According to the proposed new *Section 99 a (2), 6*), the undertaking's assessment of the results achieved from its CSR work during the financial year must be reported. Information must be provided for each policy area. The requirement implements the Directive's Article 19 a (1) (e). It is also proposed that information be reported concerning the undertaking's possible expectations of its future work, as is the case in accordance with *Section 99 a (2), 3*).

The Directive states that, as a minimum, undertakings must report the results of the undertaking's policies for the individual topics/areas, i.e. social conditions, human rights, environmental conditions, etc. as stated above in the remarks to the new *Section 99 a (2), 2*). The undertaking is not required to assess which measurable financial results the CSR work has produced. On the other hand, it is not sufficient either to solely report value-adding results for the undertaking itself. Results may include both positive and negative results for the individual (policy) areas. The information must be related to the undertaking's core activities and should be disclosed to the extent that is relevant for an understanding of the development in and the impact of the core business activities. This might e.g. concern positive or negative impacts on employees' welfare, affected persons' human rights among e.g. suppliers, environmental and climate impacts, etc.

The current *Section 99 a (2), 3*) also includes requirements that the CSR report must include details of the undertaking's assessment of what has been achieved as a consequence of the undertaking's CSR work during the financial year, as well as any expectations the undertaking might have concerning the future work. However, the current *Section 99 a* does not require this assessment to be made for each individual policy area.

Even though the current *Section 99 a (4)* does not explicitly require the undertaking to report its results, and that the report must include each individual policy area, the report must naturally overall be balanced and accurate.

If an undertaking has decided not to have CSR policies, according to the new *Section 99 a (3)* the undertaking must state this in the Management's Review, including the reasons, for each of the policy areas mentioned in *(2), 2*).

This concerns a "comply or explain" principle. There is no requirement for the undertaking to have CSR policies, but if the undertaking does not have such policies, it must state this in the Management's Review, and explain the reasons.

The "comply or explain" principle is also applied in *Section 107 b* and *Section 107 c* of the Danish Financial Statements Act concerning the statutory corporate governance report that listed companies and state-owned limited liability companies are today obliged to present. For example, *Section 107 b (1), 3*) and *4*), and *Section 107 c (1), 3*), state that the undertaking must state its reasons for not applying the relevant corporate governance code, if the undertaking has decided not to use the code.

According to the current Section 99 a it is sufficient for undertakings that do not have CSR policies to state this in the Management's Review. According to the current provision, there is thus no requirement for the undertaking to state the reasons.

By setting the "comply or explain" requirement the Directive follows a generally recognised international reporting principle.

The Directive states that the reasons given for each individual policy area must be clear and reasoned.

Section 99 a (4) continues the current Section 99 a (4) without any changes to its content. The provision concerns the report's position and publication and lies within the framework of the Directive's provisions concerning the position and publication of the report, cf. Article 19 a (4) of the Directive.

The proposal entails that the CSR report, as hitherto, must be presented in or in relation to the Management's Review, in a supplementary report to the Annual Report to which reference is made in the Management's Review, or on the undertaking's website to which reference is made in the Management's Review, cf. Section 99 a (4). The Danish Business Authority lays down more detailed rules in this respect, cf. the proposed (8), which continues the current (5). The individual undertaking can thus freely select the publication method deemed by the undertaking to be most appropriate, within the framework of the Act.

In the new *Section 99 a (5)*, it is proposed, just as in accordance with the current (6), that for undertakings that prepare consolidated financial statements it is sufficient for the information in accordance with (1)-(3) to be submitted for the overall Group.

In relation to this, it is proposed in *Section 99 a (6)*, just as in accordance with the current (7), that a subsidiary that is part of a Group may refrain from including the information in its own Management's Review, if a parent undertaking fulfils the disclosure requirements according to (1)-(3).

The new Section 99 a (5) and (6) are in accordance with the Directive's Article 19 a (3) and Article 29 a (2) and (3), which state that reporting may be at Group level, just as a (subsidiary) undertaking may refrain from CSR reporting, if it is included in an overlying Group's reporting.

In the new *Section 99 a (7)* it is proposed that, just as in accordance with the current (8), the undertaking may refrain from preparing a CSR report containing the information stated in (2) if the undertaking reports its CSR policies in accordance with international guidelines or standards.

The new Section 99 a (7) is based on the Directive's Article 19 a (4), which states that the member states do not have to require the undertaking to prepare a CSR report if the undertaking prepares a separate CSR report (e.g. a UN Global Compact report) which covers the same financial period as the Annual Report, and which fulfils the disclosure requirements in the Directive's Article 19 a (1) which are implemented in the new Section 99 a (2). With regard to the content requirements, this entails that a separate report such as a UN Global Compact Communication on Progress (COP), or a Global Reporting Initiative (GRI) report, for each policy area must fulfil the Directive's disclosure requirements, including with regard to reporting risks, etc. If the information in the report does not include the information required under the new Section 99 a (2), the undertaking must state this in the Management's Review, including the reasons, cf. the reference to the new Section 99 a (3).

Section 99 a (8), 1) authorises the Danish Business Authority to lay down more detailed rules for the publication of the CSR report in a supplementary report to the Annual Report and the obligations of auditors with regard to the information published therein.

Section 99 a (8), 2) authorises the Danish Business Authority to lay down more detailed rules for the publication of the CSR report on the undertaking's website, including rules concerning the undertaking's updating of the information on the website, and the obligations of auditors with regard to the information published on the website.

Pursuant to the current Section 99 a (5) the Danish Business Authority has issued Executive Order no. 761 of 20 July 2009 on the publication of a report on corporate governance and a CSR report on the undertaking's website, etc., as amended by Executive Order no. 194 of 21 February 2014.

The Executive Order includes regulations for how the statutory report prepared by the undertaking in accordance with Section 99 a must be described so as to ensure that there is no doubt that it concerns the statutory report, in contrast to any voluntary CSR information that might be published by the undertaking, outside the statutory report.

The published statutory report, cf. Section 99 a, may not subsequently be changed, but in the course of the following financial year the undertaking may publish an update of the information in the statutory report, in accordance with the relevant regulations in the Executive Order. The information in the updated version must be clearly separated from the statutory report, e.g. under the heading "Voluntary supplementary CSR information."

If the undertaking places the statutory report, cf. Section 99 a, on the undertaking's website and refers to it in the Management's Review, Section 99 a and the Executive Order will not prevent the undertaking from also describing its CSR work elsewhere, e.g. by including a summary of the CSR report in the Management's Review. Any such voluntary CSR information may not be presented in such a way that it can be mistaken for the statutory CSR report in accordance with Section 99 a. It is furthermore a condition that the voluntary information provided in the Management's Review fulfils the statutory general quality requirements, including the requirement of a true and fair presentation.

If the statutory report, cf. Section 99 a, is placed in the Management's Review, Section 99 a and the Executive Order will not prevent the undertaking from also publishing voluntary CSR information elsewhere, e.g. on the undertaking's website. Section 99 a thus does not prevent the undertaking from e.g. publishing a report which amplifies the report in accordance with Section 99 a. As in the example above, such voluntary CSR information may not be presented in such a way that it can be mistaken for the statutory report. If the content of the voluntary information is misleading or incorrect, according to the circumstances this may constitute a breach of other legislation.

Pursuant to Section 135 (5) of the Danish Financial Statements Act, the auditor is required to issue a statement concerning whether the information in the Management's Review is in accordance with the annual financial statements and any consolidated financial statements. The auditor's statement concerning the Management's Review includes the management's CSR report in accordance with Section 99 a. This applies irrespective of whether the report is placed in the Management's Review, or the report is placed in a supplementary report or on the enterprise's website via a reference to it in the Management's Review, as this concerns a report that belongs to the Management's Review.

The auditor's statement must include a description of material errors and deficiencies in the Management's Review that may have come to the auditor's attention. Deficiencies may include that one or several items of information according to the statutory requirements is missing. Errors

may be due to incorrect compliance with the statutory disclosure requirements. Any errors and deficiencies will be found on the basis of an inspection of the Management's Review.

It is assumed that the auditor is aware of the regulations governing the Management Review.

The auditor must thus, in brief terms, read the Management's Review and 1) compare the information therein with the information in the annual financial statements and any consolidated financial statements; 2) compare the information therein with the knowledge and the circumstances of which the auditor became aware in connection with the audit of the financial statements; and 3) based on the auditor's knowledge of the regulations consider whether there are errors or deficiencies in the Management's Review.

The more detailed rules are found in Executive Order no. 385 of 17 April 2013 concerning approved auditors' declarations. The regulations are described in the declaration guidelines, which can be viewed at www.erst.dk. Reference may also be made to the guideline material concerning CSR reports at www.csrgov.dk.

If the CSR report in accordance with Section 99 a is placed on the undertaking's website or in a supplementary report to the Annual Report, via a reference to it in the Management's Review, the auditor – in addition to the aforementioned duties – will have some special duties, as stated in the Executive Order on the publication of corporate governance reports and CSR reports on the undertaking's website, etc.

If the report is placed on the undertaking's website the auditor must thus, among other things, ensure *that* the Management's Review contains this information, stating the URL address that is to be used to access the report directly; *that* the report is published under the correct heading, so that it cannot be mistaken for voluntary CSR information; and *that* the report states that it constitutes an element of the Management's Review in the undertaking's Annual Report.

The proposed authority in Section 99 a (8) will be used to lay down regulations concerning the same conditions as the authority in the current Section 99 a (5). Pursuant to this, the Danish Business Authority has, as stated, issued the Executive Order on the publication of corporate governance reports and CSR reports on the undertaking's website, etc., as described above.

Undertakings that today prepare CSR reports according to the current Section 99 a, but which in future will prepare a report in accordance with the new Section 99 a, will thus face the same requirements in terms of the placement and publication of the report as before, and the auditor's tasks concerning the report will also be the same as before. The auditor's tasks lie within the framework of the Directive, cf. consideration no. 16 in the preamble to the Amendment Directive.

For undertakings that today use the exemption in the current Section 99 a (8) there will, however, be the difference that in future it will not be sufficient to refer in the Management's Review to e.g. Global Compact's website, on which the undertaking's Global Compact report is published. If the undertaking uses an equivalent exemption in the new Section 99 a (8), the Global Compact report must in such case also be publicly accessible on the undertaking's own website via a reference thereto in the Management's Review, as described in the remarks to the new Section 99 a(9) below. The report must also fulfil the Directive's disclosure requirements for each policy area, as described in the remarks to (7).

It is proposed in the new *Section 99 a (9)* that the Danish Business Authority be authorised to lay down more detailed rules for the conditions under which an undertaking can report on CSR according to international guidelines or standards, cf. the proposed (7), just as in accordance with the current Section 99 a (9). Pursuant to this, the Danish Business Authority has issued Executive

Order no. 1543 of 16 December 2013 concerning CSR reports in accordance with international guidelines or standards.

The Executive Order includes regulations for which international standards and guidelines may be used, instead of preparing a CSR report in accordance with Section 99 a, and on which terms. The proposed authority in Section 99 a (9) will be used to lay down regulations concerning the same conditions. There will be the difference, however, that in contrast to today, the report in question must also be publicly accessible on the undertaking's own website, as referred to in the remarks to (8), and the report must fulfil the Directive's disclosure requirements as referred to in the remarks to (7).