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MOVING FORWARD WITH THE EU NON-FINANCIAL REPORTING DIRECTIVE: ENFORCEMENT & REVIEW

Together with members and allies, ECCJ has lodged informal complaints with national authorities against EU companies for inadequate human rights due diligence reporting under the NFRD. The results clearly show the current system failing to ensure corporate respect for human rights and the environment in EU companies' global value chains. The time has come to make the UN Guiding Principles reporting framework mandatory, in order to truly change and shape corporate behavior.

About ECCJ

The European Coalition for Corporate Justice (ECCJ) advocates for European laws that guarantee corporate accountability and transparency, and ensure justice for victims of corporate malpractice.

Background

As a follow-up to the study [A Human Rights Review of the EU Non-Financial Reporting Directive](#) (February 2019) and in view of the ongoing revision of the Non-Financial Reporting Directive (NFRD), ECCJ developed a project aimed at verifying the effective implementation of reporting obligations by EU companies and the enforcement envisaged at national level.

ECCJ made a selection of **EU companies' non-financial reports that appear to not comply with the legal requirements of national laws transposing the NFRD**. For each case ECCJ and local partner organisations lodged an **"informal complaint" to the competent national authority** supposed to monitor the compliance of companies' non-financial reports. **Each "informal complaint" details the non-compliance with the nation legal requirements** and calls for better enforcement measures as well as clearer HRDD reporting requirements to make obligations more readily enforceable.

This project intends to highlight the inadequacy of companies' human rights due diligence reporting and to boost awareness of human and social rights and environmental issues linked to business activities within national authorities monitoring the corporate sector. Such authorities may not yet have proper, sound knowledge of the forms of corporate abuses the likes of which are covered in the informal complaints. Therefore, the project attempts to reinforce the protection of human and social rights and the environment both at EU and national levels, addressing specific EU national jurisdictions and relevant national authorities as well as specific EU companies called to disclose non-financial information under the NFRD.

The project involved **ECCJ's local member organisations and allies from three different EU countries**, in order to strengthen the Coalition's network and the collaboration among several European civil society organisations (CSOs) as well as to bring their voice, their competence and their commitment at EU level. The three national jurisdictions covered by the project are Italy, Spain and Poland, where ECCJ worked together with its national partners [Clean Clothes Campaign Italy](#), [Fair](#), [Human Rights International Corner](#), [Mani Tese](#), [Observatorio de Responsabilidad Social Corporativa](#), [Alianza por la Solidaridad](#) and [Frank Bold](#) Poland.

Informal complaints

Italy

In January 2020, an informal complaint was submitted by ECCJ, together with four Italian CSOs (Clean Clothes Campaign Italy, Fair, Human Rights International Corner and Mani Tese), to the Italian financial supervision authority **CONSOB** (Commissione Nazionale per le Società e la Borsa). The relevant Italian law – transposing the human rights due diligence reporting obligations from the NFRD – is the article 3 of the legislative decree 254/2016. The CSOs' informal complaint concerned two non-financial reports released in accordance with this legislative decree: the ones of **Salvatore Ferragamo** and **Prada**, two Italian luxury brands operating in the **textile and apparel sector** at the top of their respective international supply chains.

The complaint revealed a discrepancy as to the scope of the legislation: despite its image as an Italian company and the size of its supply chain, the fact that Prada is a publicly traded company on the Hong Kong market, means it is not covered by the NFRD and excluded from the CONSOB's supervision. With this complaint, CSOs highlighted the shortcomings of the two companies' non-financial statements, moreover that of non-financial reporting more generally, which has proven incapable of actually improving corporate behaviour. In particular, the complaint underlined a general lack of accurate information regarding the two companies' impacts on human and labour rights and the environment, as well as a lack of disclosure of any preventive and remedy measures –if any. This was also confirmed by the very low scores awarded by to both companies by the [Corporate Human Rights Benchmark 2019](#). From a methodological point of view, the complaint explained that in order to draft their non-financial disclosures, the two companies belong to a majority of companies which referred to the "core option" of the [GRI standards](#), that gives them a considerable margin of discretion in the choice of indicators to the detriment of the accuracy of the information reported. As a consequence, Salvatore Ferragamo SPA and Prada's non-financial reports proved to be hardly accessible and understandable to stakeholders. As for the mapping of the supply chains of the two companies, it was impossible to trace precise information about suppliers and their geographical area. The competent Italian national authority received the complaint and showed interest in organizing a follow-up meeting with the complainants.

Spain 

In June 2020, ECCJ together with ECCJ Spanish member, Observatorio de Responsabilidad Social Corporativa, and ally Alianza por la Solidaridad, submitted an informal complaint to the Spanish financial supervision authority **CNMV** (Comisión Nacional del Mercado de Valores).

The aim of the complaint was to stress the gaps and non-conformity of the ACS Group's 2018 non-financial report with the minimum reporting standards required by the Law 11/2018 of 28 December transposing the NFRD into Spanish national law. **ACS Group**, whose parent company ACS (Actividades de Construcción y Servicios S.A.), is a multinational enterprise operating in the **construction sector**. ACS's non-financial report was chosen due to the existence of a [case](#) at the OECD Spanish National Contact Point involving the company's activities in Guatemala through its subsidiary COBRA Group, to which the Guatemalan multinational CMI (Corporación Multi-Inversiones) has subcontracted the RENACE hydroelectric project. This project is producing significant environmental damages with serious social repercussions on the local indigenous community (the Q'eqchi'), which lives in that area and which was not at all consulted in this regard. The informal complaint notifies the CNMV that the RENACE project started and continued without ACS having carried out neither a full environmental, social and cultural impact assessment nor a proper human rights due diligence process, whose details do not result from the non-financial report. Based on the GRI standards, the chosen indicators were not useful to design a report aimed at transparency and disclosure, and in the end the information presented by the ACS was neither accurate, nor comparable, nor verifiable, and often essential information was missing. **While stating that there have been no formal complaints of human rights violations against ACS Group companies, the non-financial report omits reference to the complaint lodged by Alianza por la Solidaridad to the Spanish OECD national contact point.** In the face of all these shortcomings reported to the Spanish financial supervision authority, the signatory NGOs hope that CNMV will strengthen its controls and use all the compliance and enforcement mechanisms at its disposal to ensure the correct application of Law 11/2018.

Poland 

Between March and April 2020, ECCJ's partner FrankBold reported to the Polish financial supervision authority

(**KNF** – Komisja Nadzoru Finansowego) information about irregularities in the functioning and the non-financial disclosing of **Powszechny Zakład Ubezpieczeń** (PZU) S.A. –the biggest Polish **insurance company**. Frank Bold's complaints to KNF targeted the 2018 and 2019 PZU's non-financial reports exclusively focusing on **climate change** related issues.

According to the first complaint, in 2018 PZU, infringed its obligation under the article 49b of the Accounting Act – the Polish law implementing the NFRD at national level – omitting to refer to the risks related to its operations, products and business relationships, their actual impacts on the natural environment as well as a description of managing those risks. PZU has clearly hidden its indirect negative impact on climate change caused by insuring I investments leading to environmental degradation, air pollution and greenhouse gas emissions; and not disclosing information on the number and scope of property insurance contracts concluded with entities whose business model is based on the extraction or combustion of fossil fuels. This lack of reliable non-financial information does not permit socially responsible stakeholders and shareholders to properly evaluate the PZU's performance and results when it comes to its involvement in carbon-related investments.

In its second complaint related to the PZU's 2019 non-financial report, Frank Bold denounced the greenwashing operation of the company that wrongfully pretended to have fulfilled the Polish Accounting Act as well as the European Commission Guidelines on non-financial reporting concerning climate issues. While providing numerous misleading pages apparently connected to the climate change issue, PZU has not by any means provided any reliable and informative detail regarding its business model, policies implemented, risks and impacts identified. The Polish financial supervision authority (KNF) confirmed that the complaints had been received and that they would be reviewed. However, KNF pointed out that any information about findings made and actions taken as a follow-up constitute a professional secrecy within the meaning of Article 147 of the Act on Trading in Financial Instruments of 29 July 2005 and may not be disclosed to entities other than those explicitly indicated in the law.

Summary of the results

This qualitative analysis allows us to glimpse some deficiencies in the non-financial reporting system. On the one hand, **companies under the NFRD scope are not reporting properly, but only issuing high level**

statements without any adequate methodology or reference to any detailed HRDD processes in place. On the other hand, the national competent authorities are not adequately fulfilling their supervisory role, not drafting guidelines and toolkits for companies, not carrying out exhaustive controls and not exploiting all the compliance and enforcement mechanisms at their disposal.

General conclusions

This brief once again illustrates that the non-financial reporting obligations fall short of changing corporate behaviour and that a mandatory HRDD legislation at EU level is needed to achieve this result. In this regard, the Commission's DG for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) has announced that the reporting dimension of the incoming EU Due Diligence directive (lead by DG JUST) will be incorporated in the NFRD in the upcoming review.

As the intertwining of the duty to report and duty to perform due diligence is intensifying, it will be essential to ensure that DG FISMA's proposal is ambitious enough not to undermine the future EU HRDD legislation, but to stimulate and strengthen it. In order to do so, the NFRD reform should rely on the UN Guiding Principles reporting framework as the means by which European companies fulfil their existing legal HRDD duty to report under the NFRD. **Considered that an HRDD legal proposal is coming, and that the NFRD reform will anticipate the reporting part of that initiative, the UNGPs reporting framework seems to be the perfect standard to ensure consistency across this present and future EU legal framework aiming at regulating corporate activities.** Making the UNGP reporting framework mandatory within the EU through the NFRD reform would ensure the comparability of the companies' non-financial reports. At the same time, this authoritative reporting framework would guide companies in their future duty to perform due diligence, as far as it clearly describes a step-by-step process for identifying, mitigating, preventing and redressing [salient](#) negative risks and impacts not for business operations, both for people and the planet. **Finally, the new NFRD should make supply chain disclosure mandatory for companies, namely the release of suppliers' lists and ownership of subsidiaries, in order to make the enforcement of the incoming HRDD law feasible.** We will continue to work to ensure that DG FISMA does not miss this opportunity.

