

## POSITION PAPER

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**from the American Chamber of Commerce in Germany e.V.**

on the draft bill for the implementation of the “CSR Reporting Directive” 2014/95/EU in German law

April 2016

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The American Chamber in Germany e.V. (AmCham Germany) represents German subsidiaries of American parent companies and German parent companies with business activity in the USA. With that, AmCham Germany has member companies that conduct their business operations and control their worldwide supply chain from Germany, as well as companies that are subsidiaries of global enterprises focusing their operations and supplier relations on Germany. International activities and relations to suppliers in other countries are generally managed by the parent companies or from the corresponding national subsidiary.

AmCham Germany and its member companies are committed to integrating the principles of environmental sustainability and corporate social responsibility (CSR) into their daily business activities. Corporate responsibility and sustainability have traditionally been firmly embedded within companies of German-American origin and those located in the U.S. Through various activities, AmCham Germany's member companies make a major contribution to the economic prosperity and take initiative to sustainably operate their businesses in accordance with environmental and societal aspects in conformity with the values of the Honorable Merchant.

Against this backdrop, AmCham Germany welcomes the opportunity to comment on the drafted bill for the implementation of the “CSR Reporting Directive” 2014/95/EU in German law from the Federal Ministry of Justice and Consumer Protection (BMJV). We are pleased to note that the drafted bill is in line with the principal of bureaucracy reduction formulated by the coalition; a 1:1 implementation follows as far as possible.

### **Materiality Principle**

AmCham Germany welcomes that the implementation draft is oriented on the principle of materiality, whereas the term materiality is orientated on the companies' requirements and the expectations from the company's stakeholders on the fundamentals of a systematic materiality analysis.

### **Flexibility of Reporting**

We welcome that analog to the EU directive, no regulation has been made on the usage of specific frameworks or standards, and companies maintain the necessary flexibility to choose a form of reporting. They may revert to a form that fits their needs and use already established international reporting frameworks or standards. This is recommended as the standards are being continuously developed and reporting in a global economy must be compatible. Additionally, the minimum requirements improve the compatibility of reporting without reducing flexibility.

### **Auditing by Auditor**

We welcome that the regulations proposed in the implementation draft do not include an extended audit of the non-financial statement or non-financial reporting, but solely plan an audit if the non-financial report or the non-financial statement is provided and contains the required information. This helps to decrease the costs of (extended) reporting.

### **Protection of Proportionality**

The draft bill at hand emphasizes that the burden on the effected companies should be kept as small as possible. Therefore, we are critical of the fact that – in contrast to the declared goal – the implementation draft goes beyond the existing EU regulation on multiple points:

### **Non-European Parent Companies**

In the BMJV's implementation draft, it is clearly formulated that the exceptions and margins included in the "CSR Reporting Directive" should be used to avoid duplicate reporting. This principle should be strongly taken into account. As AmCham Germany we do not comprehend and do not find it acceptable that the reports from parent companies outside of Europe, especially those with parent companies in the USA that follow a general, international and therefore European standard of non-financial reporting, will not be accepted. This contradicts not only the reality of the global economy and existing CSR reporting, but also leads to a disproportional burden for the affected companies. This is all the more true for subsidiaries which are strongly controlled by the parent company and possibly have a mandatory reporting qua corporate group clause. In terms of the implementation draft, we hence call for subsidiaries that have parent companies outside of the EU to also be exempted from making their own non-financial statement.

### **Consumer Issues**

The suggestion to include consumer aspects in reporting requirements as made in the implementation bill goes far beyond the requirements set by the EU directive. AmCham Germany is against the inclusion of consumer issues in reporting requirements. Consumer issues – determined on the basis of the principle of materiality – are already reported adequately. Furthermore, consumer issues do not affect all companies; however, they can also impact other institutions with direct customer contact. Such reporting should be carried out by other organizations – government agencies, NGOs, etc. – as they often have a larger influence on consumer behavior than competitive companies. Including consumer issues in the directive would also contradict the "1:1" implementation principles which aim to strengthen equal opportunities in the single European market.

### **Costs of Reporting**

AmCham Germany believes that the estimated amount of the expected costs for performing the new non-financial reporting as stated in the CR directive from the European Commission as being between €600 and €4,300 is significantly too low. Experience shows that alone a special report according to GRI standards for German subsidiaries of American parent companies with roughly 10,000 employees can quickly result in costs of approx. €100,000. Depending on the reporting form, the costs can be much higher. Particularly crucial are the personnel costs which result from the procurement of information and its specific processing, e.g. for GRI standards.

### **Sharing Responsibility**

Finally, we would like to emphasize that we advocate a voluntary CSR reporting based on the needs of the stakeholder. Additionally, we endorse voluntary reporting; for instance, in accordance with the ISO 26,000 and/or GRI for all organizations – also for those from the public sector and civil society. The indirect goal of company reporting to sensitize sustainability issues and promote sustainability issues with company management can and should not only be applied to the private sector, but should also be applied to all sectors of society and relevant stakeholders. The global challenges cannot be solved with a one-sided discussion on sustainability reporting in the private sector. Also, in order to remain credible, it is advisable as well as important for organizations that call for transparency in business proceedings to set a good example by reporting their own transparent, non-financial reports.

AmCham Germany as well as its member companies are available for discussions at short-notice and are also willing and able to provide relevant case studies.

**Contact AmCham Germany  
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