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The nature and meaning of the Directive 2013/34/EU on financial statements according to the CJ EU

Abstract
The Directive 2013/34/EU is a fundamental part of European Union (EU) legislation harmonising the regime of financial and non-financial reporting throughout the entire EU, including reporting about corporate social responsibility (CSR). Inasmuch as its transposition deadline expired in 2015, it is possible and also highly elucidating to holistically study its nature and actual transposition. A related literature summing up, accompanied with a legislation and transposition review compiled via the EUR-Lex database, makes for a solid foundation for a holistic and critical exploration of the related case law of the ultimate judicial authority for the interpretation and application of the Directive 2013/34/EU, namely the Court of Justice of the EU (CJ EU). Researching this case law within the Curia database brings forth an interesting meta-analysis, refreshed by Socratic questioning, which reveals the approach of the CJ EU to the Directive 2013/34/EU. The hypothesis suggests that this case law of the CJ EU offers valuable and as-yet hitherto-neglected indices, signifiers about the EU conforming to the perception of the nature and meaning of the Directive 2013/34/EU. These indices could be pivotal for further improvement of the harmonized regime of financial and non-financial reporting, for the boosting of CSR and also for supporting European integration and its legitimacy.

Keywords
Court of Justice of the EU | financial and non-financial reporting | Directive 2013/34/EU

JEL Codes
G38, K22, M14, O43

1 Introduction

Modern European integration uses both supranational and intergovernmental approaches and targets the single internal market with the four fundamental freedoms of movement (MacGregor Pelikánová and MacGregor, 2018a). The European Union (EU) desires to be the leading (not the only) economic power in the global setting (Piekarczyk, 2016). The current top EU strategy, Europe 2020, gives top priority to the smart, sustainable and inclusive growth of the entire EU (European Commission [EC], 2010) and requires the active engagement of all the multifarious stakeholders (Thalassinos and Thalassinos, 2018). The EU and EU member states should establish an effective and efficient law framework for that. Ultimately, European businesses should follow fair and vigorous competition standards, healthy financial planning and the concept of sustainability and should enhance the public-at-large's general awareness (Bode and Singh, 2018) of such, and form a clarion call about that by publishing (MacGregor Pelikánová, 2018) their annual reports with both financial and non-financial statements (MacGregor Pelikánová, 2019a; Matuszak and Róźanska, 2017). This should aid in their self-reflection, enhance general awareness and offer a transparent compendium about their situation from a strictly accounting and accountable perspective, apart from their corporate social responsibility ('CSR') perspective (MacGregor Pelikánová and MacGregor, 2018c; Sroka and Lőrinczy, 2015). It needs to be understood that CSR represents a set of responsibilities regarding ethical, legal and other duties of businesses towards the society as a whole (MacGregor and

MacGregor Pelikánová, 2019; Schrerer and Palazzo, 2011). Namely, it is a reflection of the modern concept of sustainability, which emerged in the 1960s in the USA and was incorporated in the United Nations Brundtland Report 1987 and which ultimately led to the merger of the systematic and visionary soft law on self-regulation of businesses with the normatively and morally regulated corporate responsibility (Bansal and Song, 2017;. Hahn, Figge, Pinkse, and Preuss, 2018).

The EU reacted to these demands through the enactment of Directive 2013/34/EU of 26 June 2013 on annual financial statements, consolidated financial statements and related reports of certain types of undertakings, as amended by Directive 2014/95/EU, also known as (aka) the Accounting Directive ('Directive 2013/34'). Directive 2013/34 imposes a duty upon certain large businesses (accounting units pursuant to accounting legislation), a duty to publish information in their annual reports about their environmental, societal and employment issues, as well as their respect for human rights and their fight against corruption and bribery. This information is intended for informing all stakeholders, including investors and customers, and assists with the establishment of a sustainable economy. While Directive 2013/34 does not want to sink in the mire of inefficient bureaucracy, it should be understood that it does not represent strictly full harmonization of instruments and merely determines and demonstrates the type of information that should be made public, yet it leaves it to the discretion of the EU member states and their businesses how, and in how much—or how little – detail, this information should be forthcoming. Although Directive 2013/34/EU offers a full range of alternative solutions and has led to various efforts of EU member states, predictably, the resulting harmonization is far from being crystal clear and perfect.

Directive 2013/34 took effect on 19 July 2013, and the deadline for transposition expired on 20 July 2015. Due to the various amendments, the consolidated version of Directive 2013/34 was issued on 11 December 2014. The EU member states complied and used a multitude of strategies to transpose Directive 2013/34 – starting with the enactment of one special act, lex specialis, over a few legislative changes and ending with massive changes of many national acts and statutes.

The ultimate assessment of both the transposition of Directive 2013/34 and its fulfilment in the real world is in the hands of the top judiciary authorities, i.e. judges of the Court of Justice of the EU ('CJ EU'), to whom subjects can turn with direct actions based on Directive 2013/34 or with indirect actions based on national courts' requests for preliminary rulings about the interpretation of Directive 2013/34. Therefore, the nature and meaning of Directive 2013/34 is to be detected and proclaimed with the final authority by the CJ EU via its case law (Lenaerts and Guttiérez-Fons, 2013). What message (appropriate or otherwise), if any, can we extract from the so-far available CJ EU case laws? The hypothesis suggests that there is a sufficient case law of the CJ EU, which offers valuable and so-far-neglected indices about the EU conforming to the perception of the nature and meaning of the Directive 2013/34/EU. These indices could be pivotal for further improvement of the harmonized regime of financial and non-financial reporting, for the boosting of CSR and for supporting European integration and its legitimacy. In order to confirm or reject this hypothesis, a legislative and literature review regarding Directive 2013/34 is performed in Section 2; appropriate resources, research techniques and methods are identified in Section 3. Thereafter, a closer scrutiny of Directive 2013/34 and its selected provisions, along with transposition strategies, is undertaken in Section 4. In addition, the top case law of the CJ EU regarding Directive 2013/34 is explored in Section 5, while paying close attention to the revolutionary case C-508/13 in Section 6. The yielded results and related discussion, presented in Section 7, propose answers, or at least indications, confirming the hypothesis and offering an interesting perspective in Section 8, about the harmonization of financial and non-financial reporting in the EU and about modern European integration in general.

2 Legislative and literature review

The majority of European jurisdictions belong to the continental law family, focusing on formalism (MacGregor Pelikánová, 2017), while the minority of jurisdictions come from the common law family, oriented towards pragmatism (MacGregor Pelikánová and MacGregor, 2018a). Despite the blurred distinction between historical truth and reality (Chirita, 2014), obviously, the EU and the EU law mixes both these traditions (Rogalska, 2018), and this is cemented by the EU's 'constitutional setting', i.e. by the three top foundation documents of the current EU, aka EU

primary law (MacGregor Pelikánová and MacGregor, 2019).

The first of them is the Treaty on the EU ('TEU'), which was originally called the Maastricht Treaty and which created the EU in 1991. The TEU has 55 Articles and underlines the key features of the EU and EU law, such as the establishment of the internal market and working for the sustainable development of Europe based on balanced economic growth and a highly competitive social market economy (Art.3). In other words, the TEU targets a highly competitive social market economy while promoting scientific and technological advances (MacGregor Pelikánová and MacGregor, 2018a). Further, the TEU provides clear competence borderlines. This is done by explicitly stating that competences not conferred upon the EU remain with the EU member states (Art.4) and that competences conferred upon the EU are to be exercised in compliance with the principles of proportionality and subsidiarity (Art.5). Under the principle of proportionality, the content and form of EU actions shall not exceed what is necessary to achieve the objectives of the Treaties (Art.5). Plus, under the principles of subsidiarity, the conferred share competence (i.e. not conferred exclusive competences) can be exercised by the EU only if the proposed aim cannot be sufficiently achieved by EU member states (Art.5).

The second foundation document is the Treaty on the Functioning of the EU ('TFEU'), which was originally the Rome Treaty that created the European Economic Community in 1957. The TFEU has 358 Articles and further develops the TEU. The TFEU defines areas for which the EU has conferred exclusive competences (Art.3) and for which the EU has conferred shared competences (Art.4). The principal areas of shared competences include, among others, the internal market, as well as environmental and consumer protection (Art.4). The TFEU focuses in detail on the internal market, including provisions covering the right of establishment (Art.49 et foll.) and consumer protection (Art.169) (MacGregor Pelikánová and MacGregor, 2018a), as well as on economic, social and territorial cohesion (Art.174 et foll.). Naturally, the TFEU also deals with all seven key EU institutions, including the CJ EU, and defines direct and indirect actions (Art.251 et foll.). Direct actions include actions demanding the review of the legality of legislative acts, including Directives, which can be brought by EU member states within two months of their publication (Art.263). Far more common are indirect actions asking the CJ EU to give preliminary rulings concerning the interpretation of the Treaties or Acts, such as a Directive, which can be brought by any court or tribunal from the EU member states (Art.267).

The third foundation document is the Charter of Fundamental Rights of the EU ('Charter'), which proclaims and codifies personal, civic, political, economic and social rights enjoyed by people within the EU in a single text. The Charter was issued in 2000 and became legally binding by the operation of the Treaty of Lisbon in 2009. The Charter has 54 Articles and codifies the freedom to conduct a business in accordance with EU law, EU member state's laws and practices (Art.16), as well as a high level of environmental protection (Art.37), a high level of consumer protection (Art.38), and the right to good administration pursuant to which every person has his or her own right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the EU (Art.41).

The EU primary law is the foundation for the EU secondary law represented by Regulations and Directives, including Directive 2013/34, which was updated by Directive 2014/95/EU, regarding disclosure of non-financial and diversity information by certain large undertakings and groups, ('Directive 2014/95') and by Directive 2014/102/EU, regarding the accession of Croatia. Of these two updates, certainly the more important one is 2014/95, which added to Directive 2013/34 – among other items – the famous Art.19a about non-financial statements (MacGregor Pelikánová, 2019a). This amendment came to boost the CSR of businesses, especially the category of the environment and research-and-development (R&D), and it perhaps ultimately rewards businesses' ethics and their interaction with CSR (Sroka and Szanto, 2018). In December 2014, the EU issued a consolidated version of the Directive 2013/34, i.e. the version as updated by Directive 2014/95 and Directive 2014/102. Consequently, any further analysis and references regarding Directive 2013/34 in this paper means, in short, reference to its consolidated version.

Another piece of the EU secondary law with relevance for business reporting, especially its form and publication, is Directive (EU) 2017/1132 of 14 June 2017, relating to certain aspects of company law ('Directive 2017/1132'). Directive 2017/1132 demands compulsory disclosures, by companies, of a set of documents, including the instrument of its constitution and accounting documents (Art.14). This disclosure is to be done in the national register, i.e. each

EU member state has to have a central, commercial or company register, where a file is kept with such documents for each company (Art.16) (MacGregor Pelikánová and MacGregor, 2018b). The obtained data is then migrated into the central EU portal, eJustice.europe (MacGregor Pelikánová and MacGregor, 2017; MacGregor Pelikánová, 2018).

Each and every judge in the various EU member states has to interpret and apply the EU law along with national laws, except the CJ EU, where the judges deal exclusively with the EU law and are considered the top authorities for its interpretation. As mentioned above, it is done either based upon direct actions, which are extremely rare, or based upon indirect actions asking for preliminary rulings, which are quite common. All these judgements and other decisions of the CJ EU constitute a case law often called the EU supplementary law. This further demonstrates the above-mentioned mixed nature of the EU and EU law, i.e. the CJ EU case law is partially precedential.

Along with the primary, secondary and supplementary EU law, there are EU strategies and policies, which are not, per se, sources of law, but they are still extremely influential. This is further magnified by the coordinated and mutually supporting work of the pro-integration internal tandem, the EC and the CJ EU (MacGregor Pelikánová, 2012). Currently, one fundamental strategy is coming to a close, Europe 2020, and a new one is about to emerge. Europe 2020 was shaped by both formal and informal institutions (Pasimeni and Pasimeni, 2016) and finally prepared by the EC, which was hoping-believing in the upcoming economic dominance of the EU in the global market (Stec and Grzebyk, 2017). Well, better to set the bar too high than too low, so it was certainly a praise-worthy plan, even if it did not pan out. Europe 2020 was an extremely ambitious strategy, expecting the growth of competitiveness and innovations (Balcerzak, 2016a, 2016b; Świadek, Dzikowski, Tomaszewski, and Gorączkowska, 2019; MacGregor Pelikánová and MacGregor, 2019), as well as cohesion and solidarity (Tvrdoň, Tuleja, and Verner, 2012). MacGregor Pelikánová, 2019c; Pohulak-Żołędowska, 2016; Polcyn, 2018). Europe 2020 is another example of European thinking in economic terms (MacGregor Pelikánová, 2019b), hoping that economic solutions will fix all current problems at once (Tvrdoň, 2016; Staníčková, 2017; Melecký, 2018) in a unified manner across the entire EU (Lajtkepova, 2016).

Within this context, and with the understanding of all these sources taken into account, the nature and meaning of Directive 2013/34 are to be determined, while following an appropriate methodology.

3 Data and research method

This manuscript deals with the nature and meaning of Directive 2013/34 according to the CJ EU. It analyses the legislative setting, its transposition and its appreciation by this top judiciary authority. This leads to a battery of research sub-questions and ultimately to the confirmation or rejection of the hypothesis that the CJ EU case law offers valuable, and so-far-neglected, indices about the EU conformity in terms of the perception of the nature and meaning of the Directive 2013/34. These indices could be pivotal for further improvement of the harmonized regime of financial and non-financial reporting, for the boosting of CSR and for supporting European integration and its legitimacy. Both the nature and meaning of Directive 2013/34 aim to promote an effective, efficient and harmonized financial and non-financial reporting system in the EU and to support CSR.

This paper is a pioneering attempt to research, explore and analyse relevant CJ EU cases. The foundation of this paper is the already-detailed legislative and literature review (Section 2) and the analysis of Directive 2013/34 and its selected provisions (Section 3), along with the multifarious transposition strategies used by EU member states, as made available from the EUR-Lex database (Section 4). However, at its core is the exploration of CJ EU case law (Section 5) and, in particular, the revolutionary case C-508/13, as available from the Curia database (Section 6). The combined teleological interpretation of Directive 2013/34 and related sources, understanding of the transposition strategies and of the CJ EU case law (Lenaerts and Guttiérez-Fons, 2013) should facilitate the confirmation or rejection of the expectation (hypothesis) that the CJ EU case law offers valuable, and so far neglected, indices about the nature and meaning of the Directive 2013/34. If the hypothesis is confirmed, then the nature and meaning should be holistically and plainly stated.

The holistic, open-minded meta-analysis (Schmidt and Hunter, 2014) clearly is suitable to deal with the heterogeneous nature of the sources (Silverman, 2013) and needs to be enhanced by Socratic questioning (Areeda, 1996). The legislative, judiciary, economic and technical aspects shape the focus, targeting

both qualitative and quantitative data and entailing deductive and inductive aspects of legal thinking (MacGregor Pelikánová, 2019a) and certainly building upon the text analysis, especially content and qualitative text analysis (Kuckartz, 2014). A legislative research and comparative critical analysis needs to be performed regarding the wording and transposition of Directive 2013/34. The EUR-Lex database and the Czech law databas Aspi can be further expanded by making national legislative searches. A complex research of the CJ EU case law via the Curia database needs to be done while focusing both on direct and indirect actions and the extracted cases have to be mined and explored while using a teleological and purposive approach. The yielded results and related discussion (Section 7) propound answers, or at least indications for answers, to the research sub-questions, confirm the hypothesis and offer an interesting perspective about the harmonization of financial and non-financial reporting in the EU and about the modern European integration in general (Section 8).

4 Directive 2013/34 – content and transposition

Directive 2013/34 is a legislative instrument requiring a deep understanding of its content (Section 4.1) and an appropriate transposition in all EU member states (Section 4.2).

4.1 Directive 2013/34 – content

Directive 2013/34 attempts to consolidate and combine several concepts and priorities; the terminology, definitions and foundations used are somewhat ambiguous and/or vague. It deals with undertakings (Art.1), which are private limited companies, aka limited liability companies, and public limited companies, aka shareholder companies (Annexe I). However, it imposes the duty to include non-financial statements in the management report upon large undertakings, which are public-interest entities having an average number of 500 employees as the criterion on their balance sheet dates(Art.19a). Whether the beneficiary of this duty is the entire society, consumers, investors or other stakeholders is not clearly set, and thus the impact on consumer decisions is ambiguous (Kukla-Gryz and Zagórska, 2017). The threshold is clearly set only for the large undertakings, i.e. undertakings exceeding the maximum limits for the small- and medium-sized undertakings, aka small- and medium-sized enterprises ('SMEs') – a balance sheet total of EUR 20 million, a net turnover rate of EUR 40 million and 250 employees (Art.3). This leads to the burning question about who these public interest entities are, which is only partially answered (Art.2), and to the question regarding what exactly should be included in these statements. This is only vaguely answered by reference to an undertaking's development, performance, position and the impact of its activity, relating to, at a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters (Art.19a) (MacGregor Pelikánová and MacGregor, 2018c).

4.2 National transposition strategies with respect to Directive 2013/34

The data offered by EUR-Lex indicated that Directive 2013/34 was transposed across the EU member states while respecting the deadline and while using dramatically different techniques. Table 2 shows the extent of quantitative differences, i.e. the number of legislative measures, typically national legal Acts and statutes, enacted in order to transpose Directive 2013/34 and/or to make the prior national legislation conform to Directive 2013/34.

Table 1 indicates that the majority of EU member states used merely one or just a few legislative measures; as a matter of fact, five EU member states (Denmark, Germany, Ireland, Spain and Austria) have managed to adjust their national law to the regime brought out by Directive 2013/34 by enacting one single legal Act – statute. In contrast, five other EU member states (the Czech Republic, Lithuania, Hungary, the Slovak Republic and Sweden) needed many more national legislative measures.

Naturally, this quantitative data about national transposition strategies has to be complemented by qualitative data about the nature and type of such transposition measures. EU member states with a lean transposition strategy either amended one critical statute, such as an Accounting Act, or enacted one statute that modified a large number of other statutes in order to become compliant with Directive 2013/34. This can be contrasted with those EU member states with an 'average' number of transposition legislative measures – for example, Estonia with five, see Table 3.

Tab. 1: Directive 2013/34 – content map (with comments)

Chapter	Selected provisions
Preamble	(4) Annual financial statements pursue various objectives and do not merely provide information for investors in capital markets but also give an account of past transactions and enhance corporate governance. (Both financial and non-financial statements are important – opening the way to CSR reporting)
Chapter 1 Scope, Definitions	Art.2 (1) 'public-interest entities' means undertakings within the scope of Article 1, which are as follows: (a) ... transferable securities are admitted to trading on a regulated market; (b) credit institutions ...; (c) insurance undertakings ...; (d) designated by member states as public-interest entities, for instance, undertakings that are of significant public relevance because of the nature of their business, their size or the number of their employees; (The (in)definite definition of public-interest entities)
Chapter 2 General Provisions and Principles	Art.4 The annual financial statements shall constitute a composite whole and shall, for all undertakings, comprise, as a minimum, the balance sheet, the profit-and-loss account and the notes to the financial statements.
Chapter 3 Balance Sheet and Profit-and-Loss Statement	Art.9 (1) The layout of the balance sheet and of the profit-and-loss account shall not be changed from one financial year to the next. Departures from that principle shall, however, be permitted in exceptional cases in order to give a true and fair view of the undertaking's assets, liabilities, financial position and profit or loss. Any such departure and the reasons therefor shall be disclosed in the notes to the financial statements.
Chapter 4 Notes to Financial Statements	Art.16 Content of the notes to the financial statements relating to all undertakings 1. In the notes to the financial statements, all undertakings shall, in addition to the information required under other provisions of this Directive, disclose information in respect of the following: (a) accounting policies adopted;... (h) the average number of employees during the financial year.
Chapter 5 Management Report	Art.19a Non-financial statement 1. Large undertakings, which are public-interest entities exceeding – on their balance sheet dates – the criterion of the average number of 500 employees during the financial year shall include in the management report a non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, at a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters,... (CSR reporting category: 1st – environmental; 2nd - employee matters; 3rd - social matters; 4th - human rights; 5th – anti-corruption and bribery; and 6th – R&D missing)
Chapter 6 Consolidated Financial Statements	Art.22 The requirement to prepare consolidated financial statements 1. A member state shall require any undertaking governed by its national law to draw up consolidated financial statements and a consolidated management report if that undertaking (a parent undertaking): ...
Chapter 7 Publication	Art.30 General publication requirement 1. Member states shall ensure that undertakings publish within a reasonable period of time, which shall not exceed 12 months after the balance sheet date, the duly approved annual financial statements and the management report ... Art.32 Other publication requirements 1. Where the annual financial statements and the management report are published in full, they shall be reproduced in the form and text on the basis of which the statutory auditor or audit firm has drawn up his/her/its opinion. They shall be accompanied by the full text of the audit report.
Chapter 8 Auditing	Art.34 General requirement 1. Member states shall ensure that the financial statements of public-interest entities, as well as medium-sized and large undertakings, are audited by one or more statutory auditors or audit firms approved by the member states to carry out statutory audits on the basis of Directive 2006/43/EC.
Chapter 9 Exemptions	Article 36 Exemptions for micro-undertakings 1. Member states may exempt micro-undertakings from any or all of the following obligations: ...

Continued **Tab. 1**: Directive 2013/34 – content map (with comments)

Chapter	Selected provisions
Chapter 10 Report on Payments to Government	Art.42 Undertakings required to report on payments to governments 1. Member states shall require large undertakings and all public-interest entities active in the extractive industry or the logging of primary forests to prepare and make public a report on payments made to governments on an annual basis...
Chapter 11 Final Provisions	Art.52 Repeal of Directives 78/660/EEC and 83/349/EEC (Cancellation of the 4th Directive about annual accounts of companies with limited liability)

Source: Processing by the authors based on EUR-Lex.

Tab. 2: Selected EU member states and their number of legislative measures to transpose Directive 2013/34

BE	BG	CZ	DK	GE	FR	HR	IT	LV	LT	MT	NL	PL	PT	RO	SK	SW	UK
2	5	66	1	1	7	3	2	4	62	2	4	8	3	10	17	21	5

Source: Processing by the authors based on EUR-Lex.

Tab. 3: Estonia – five legislative measures to transpose Directive 2013/34

Act (Statute)	Identification – official publication information
Accounting Act	Official publication: *Riigi Teataja*; Number: *RT I, 30.12.2015, 65*
Act amending the Accounting Act and other related Acts	Official publication: *Elektrooniline Riigi Teataja*; Number: *RT I, 30.12.2015, 4*
1. Law of Auditors Activities 1	Official publication: *Riigi Teataja*; Number: *RT I, 30.12.2015, 8*
2. Credit Institutions Act	Official publication: *Riigi Teataja*; Number: *RT I, 31.12.2015, 43*
Commercial Code	Official publication: *Elektrooniline Riigi Teataja*; Number: *RT I, 30.12.2015, 73*

Source: Prepared by the authors based on EUR-Lex.

However, the most puzzling aspect is the number of Czech legislative measures taken in order to achieve the transposition of Directive 2013/34. Indeed, the amazing number 66 reflects the fact that the Czech Act No 563/1991 Coll. on accounting ('Czech Accounting Act') has been amended 44 times. Since 2013, it has been amended by six statutes, and the majority of them are for transposing Directive 2013/34. The Czech atrophic and fragmented strategy shows that certain legislative bodies have a very hard time in handling the evolution, including the EU law evolution linked to Directive 2013/34. This could be perceived as an indication about the problematic understanding and meaning of Directive 2013/34. This proposition is further supported by the wording of the Czech Accounting Act, which sets out a legal duty for certain enterprises to have their final accounts verified by an auditor (Art.20). The group of enterprises to which this legal duty applies includes enterprises hitting at least one of the following three thresholds: (i) assets of CZK 40 million, (ii) a turnover of CZK 80 million and (iii) 50 employees (Art.20). In addition, the subjects of this 'auditing' legal duty have another duty – to also prepare an annual report with financial and non-financial information, including the information about R&D, environmental protection activities and employment relationships (Art.21). This legal duty needs to be understood in the light of the Czech Act No 304/2013 Coll., on public registers, which regulates the Czech Commercial Register and its records (Art.42 et foll.) and specifically states that the Collection of documents kept by the Czech Commercial Register

Tab. 4: CJ EU case law about Directive 2013/34 – closed cases and documents

Case	Document	Date	Parties	Subject matter
C-414/18	Judgement	3 December 2019	Iccrea Banca	Freedom of establishment
C-255/18	Opinion	26 June 2019	State Street Bank International	Approximation of laws
C-255/18	Judgement	14 November 2019	State Street Bank International	Approximation of laws
C-643/16	Judgement	7 November 2018	American Express	Freedom of establishment
C-508/13	Application (OJ)	8 November 2013	Estonia v Parliament and Council	Freedom of establishment
C-508/13	Judgement	18 June 2015	Estonia v Parliament and Council	Freedom of establishment
C-508/13	Judgement (OJ)	7 August 2015	Estonia v Parliament and Council	Freedom of establishment
C-508/13	Judgement (Summary)	18 June 2015	Estonia v Parliament and Council	Freedom of establishment
C-357/13	Opinion	18 December 2014	Drukarnia Multipress	Taxation – Indirect Taxation

Source: Processing by the authors based on Curia.

includes annual reports (Art.66). Therefore, the wording of the Czech transposed regime differs greatly from the wording of Directive 2013/34 and points to the arguably blurred nature and meaning of Directive 2013/34. This proposition naturally needs to be tested by the case law of the CJ EU.

5 The CJ EU case law about Directive 2013/34

Since 2015, the harmonized regime regarding financial and non-financial reporting based on Directive 2013/24 is in force and under full application in the EU. Consequently, all interpretation and application issues and challenges regarding it are to be ultimately resolved and decided by the top judiciary authority, in this context, the CJ EU. Indeed, the validity of this regime (via direct actions) and the understanding of this regime (via indirect actions) are to be decided by the CJ EU. Typically, after the enactment and/or the expiration of the transposition deadline, Directives form the foundation for many indirect actions by which judges from the entire EU ask the CJ EU for preliminary rulings regarding the interpretation and application of selected provisions of a Directive, while but rarely does an EU institution or a EU member state raise a direct action challenging the validity or observance of a Directive.

However, the search of the CJ EU case law, i.e. of the Curia database available at curia.eu, brought an entirely different picture. On 28 December 2019, the following two criteria were entered in the search field: case status – case closed and text – Directive 2013/34/EU. Therefore, the search brought out all finally decided cases with their documents, which mention 'Directive 2013/34/EU'. Table 4 summarises these five cases and nine documents, i.e. so far, only five cases were finally decided and *res iudicata.*

The first case is *C-414/18 Iccrea Banca*, which emerged based on a request for a preliminary ruling from an Italian tribunal regarding Directive 2014/59/EU and dealing with the recovery and resolution of credit institutions and investment firms and their annual contributions. Directive 2013/34 was mentioned only marginally by stating '*...institutions shall provide the resolution authority with the latest approved annual financial statements which were available, ..., together with the opinion submitted by the statutory auditor or audit firm, in accordance with Article 32 of Directive 2013/34/EU ...*' Therefore, this case is a mere confirmation of the duty set by Art. 32 and does not provide further indications about the nature and meaning of Directive 2013/34.

The second case is *C-255/18 State Street Bank*, which emerged based on a request for a preliminary ruling from an Italian tribunal regarding Directive 2014/59/EU and dealing with the recovery and resolution of credit institutions and national arrangement. Directive 2013/34 was mentioned only marginally by stating, as in *C-414/18 Iccrea Banca*, '*...institutions shall provide the resolution authority with the latest approved annual financial statements which were available,...., together with the opinion submitted by the statutory auditor or audit firm, in accordance with Article 32 of Directive 2013/34/EU...*' Therefore, this case is a mere re-confirmation of

the duty set by Art.32 and does not provide further indications about the nature and meaning of Directive 2013/34.

The third case is *C-643/168 American Express*, which emerged based on a request for a preliminary ruling from a UK court, the High Court of Justice – Queen's Bench Division, regarding Directive 2015/2366 and dealing with payment services in the internal market and the duty to provide authorised or registered payment service providers with access to the payment system. Directive 2013/34 was mentioned only marginally by stating *'…"group" means a group of undertakings which are linked to each other by a relationship referred to in Article 22(1), (2) or (7) of [Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ 2013 L 182, p. 19)] or undertakings as defined in Articles 4, 5, 6 and 7 of [Commission Delegated Regulation (EU) No 241/2014 ….'* Thusly, this case is a mere confirmation of a definition of 'group' by Art.22 and does not provide any further indications about the nature and meaning of Directive 2013/34.

The fourth case is *C-508-13 Estonia v Parliament and Council*, which emerged based on a direct action for annulment and represents an exception attempt of one EU member state to challenge the regime set by Directive 2013/34, i.e. to invalidate Directive 2013/34 due to the violation of principles of subsidiary and proportionality set by the TFEU and the violation of the duty to cite reasons. This is a truly revolutionary case going to the very roots of the nature and meaning of Directive 2013/34; as a matter of fact, this case is not only about the qualitative aspects, it is even about the quantitative aspects – to have or not to have Directive 2013/34. In addition, it has constitutional dimension. Due to its pivotal importance, it is discussed in Section 6.

The last, the fifth case, is *C-357/13 Drukarnia Multipress*, which emerged based on a request for a preliminary ruling from a Polish court regarding Directive 2008/7/EC and dealing with indirect taxes on the raising of capital and contributions of capital to a partnership limited by shares. Directive 2013/34 was mentioned only marginally in a footnote, i.e. the judgement mentions the fourth company law directive and puts a footnote 30, which states '…*Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3) (g) of the Treaty on the annual accounts of certain types of companies (OJ 1978 L 222, p. 11). This directive was repealed by Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports* of *certain types of undertakings, institutions shall provide the resolution authority with the latest approved annual financial statements which were available, …'* Thus, this case is a mere confirmation of cancellation provisions set in the body of Directive 2013/34 and does not provide further indications about the nature and meaning of Directive 2013/34. Instead, this Polish case needs to be appreciated in the light of the evolution of Poland's economic performance (Gomułka, 2018).

Hence, truly pivotal for the exploration of the nature and meaning of Directive 2013/34 is the above-mentioned fourth case, i.e. *C-508/13 Estonia v Parliament and Council.*

6 The revolutionary case C-508/13

The truly exceptional case *C-508/13 Republic of Estonia v European Parliament and Council of the EU* aka *C-508/13 Estonia v Parliament and Council* was launched by the direct action on annulment on 23 September 2013 and it was decided by the Second Chamber of the CJ EU on 18 June 2015. Case *C-508/13 Estonia v Parliament and Council* deals with the duty of some businesses to prepare and publish financial statements and tests this duty in the light of the constitutional principles of subsidiary and proportionality set by the TFEU. Specifically, Estonia demanded the annulment of Art.4(6), Art.4(8), Art.6(3) and Art.16(3) of the Directive 2013/34, targeting the legal duty of SMEs and the possibility of national exceptions (Table 5). Alternatively, if these provisions could not be annulled, then Estonia asked for the annulment of the whole of Directive 2013/34.

First, the CJ EU in C-508/13 ruled that the requirement of severability is not satisfied because the annulment of the contested provisions would necessarily affect the substance of Directive 2013/34 and would impair the balance between the undertakings and addressees of financial information, and between large and small undertakings. Hence, the CJ EU took an 'all or nothing' approach, i.e. denied the option to annul (cancel) the mentioned provisions because they are not severable. Second, the CJ EU in C-508/13 moved

Tab. 5: *C-508/13* provisions targeted to be annulled, i.e. contested provisions of Directive 2013/34

Art.4(6)	*6. By way of derogation from paragraph 5, Member States may require small undertakings to prepare, disclose and publish information in the financial statements which goes beyond the requirements of this Directive, provided that any such information is gathered under a single filing system and the disclosure requirement is contained in the national tax legislation for the strict purposes of tax collection.*
Art.4(8)	*8. Member States using electronic solutions for filing and publishing annual financial statements shall ensure that small undertakings are not required to publish, in accordance with Chapter 7, the additional disclosures required by national tax legislation, as referred to in paragraph 6.*
Art.6(3)	*3. Member States may exempt undertakings from the requirements of point (h) of paragraph 1.*
1. Art.16(3)	*3. Member States shall not require disclosure for small undertakings beyond what is required or permitted by this Article*

Source: Prepared by the authors based on EUR-Lex.

to scrutinise the entire Directive 2013/34 in the light of the principle of proportionality, the principle of subsidiarity and the obligation to state reasons.

Pursuant to the principle of proportionality, the content and form of EU actions shall not exceed what is necessary to achieve the objectives of the Treaties (Art.5 TFEU) and Estonia claimed that the principle of proportionality is not observed by provisions limiting the option to derogate from the prohibition on imposing requirements on small undertakings (see Art.5 TFEU). Namely, Estonia had already previously enacted national rules based on International Financial Reporting Standards (IFRS), which require additional information above and beyond that required by Directive 2013/34, and such an increase of the legal duty for small undertakings goes beyond the permission given by Directive 2013/34. In addition, Estonia did not agree with the quantitative indicators for small undertakings. Further, Estonia clearly stated, '*As regards, next, Article 6(1) (h) in conjunction with Article 6(3) of the Directive allowing Member States to exempt undertakings from observing the accounting principle of 'substance over form', the Republic of Estonia states that such an exemption, in derogating from the principle of 'a true and fair view', runs counter to the objective of improving the comparability and clarity of undertakings' financial statements.*' The CJ EU replied by emphasising that 'the principle of proportionality, which is one of the general principles of EU law, requires that measures implemented through provisions should be appropriate for attaining the objective pursued and must not go beyond what is necessary to achieve it' and by imposing a massive burden of proof on Estonia with respect to the (in) validity of Art.6(3). The CJ EU stated, '*As regards that possibility, it is not apparent from the documents before the Court that the Republic of Estonia has included with its plea in law,..., sufficient evidence to demonstrate the manifestly inappropriate nature of the measures adopted by the EU legislature having regard to the objective of improving the comparability and the clarity of financial information of undertakings covered by the Directive.*' Consequently, the CJ EU rejected this set of arguments referring to the principle of proportionality by stating that the contested provisions are appropriate for achieving the objectives of Directive 2013/34 and that Estonia did not show that the new regime would create an excessive harm to addressees of financial information.

Pursuant to the principle of subsidiarity, conferred share can be exercised by the EU only if the proposed aim cannot be sufficiently achieved by EU member state (Art.5 TFEU), and Estonia claimed that the principle of subsidiarity is not observed, because Estonia had already implemented a national policy on reducing the administrative burden by means of an electronic reporting system, aka the 'one-stop-shop'. The CJ EU recognised the importance of the principle of subsidiarity and followed with the discussion about the objectives of Directive 2013/34. Namely, the CJ EU stated that '*the objectives of the Directive are twofold, consisting not only of harmonising financial information of EU undertakings so that addressees of the financial information have comparable data, but also of doing so by taking into account, through a special scheme, itself also largely harmonized, of the particular situation of small undertakings on which the application of accounting requirements laid down for medium and large undertakings would impose an excessive administrative burden.*' Thereafter, the CJ EU ruled that the subsidiarity principle is not intended to limit the EU's competence on the basis of a particular situation in one EU member state, and this, even if the national setting is more advanced. Specifically, the CJ

EU stated '*It follows that the principle of subsidiarity cannot have the effect of rendering an EU measure invalid because of the particular situation of a Member State, even if it is more advanced than others in terms of an objective pursued by the EU legislature, where, as in the present case, the legislature has concluded on the basis of detailed evidence and without committing any error of assessment that the general interests of the European Union could be better served by action at that level.*'

As far as the lack of explanation, Estonia argued that the EU legislature, in Directive 2013/34, did not set out the reasons for the limitations it imposed (see Art.296 TFEU). However, the CJ EU stated that, although EU authorities must provide reasoning for their measures, they do not need to go into every detail. In addition, Estonia participated in the legislative procedure leading to the adoption of Directive 2013/34. The ruling of the CJ EU in this respect even referred to the case law and to the teleological approach by stating that '*Moreover, it follows from the case-law of the Court that observance of the obligation to state reasons must be evaluated not only according to the wording of the contested act, but also according to its context and the circumstances of each case, in particular the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations.*'

Since all their pleas failed, the action was dismissed and the CJ EU firmly expressed its view about the nature and meaning of the Directive 2013/34.

7 Results and discussion

The EU drive for global competitiveness, digital readiness and accounting standardization is a current phenomenon. As a matter of fact, already the Regulation (EC) No 1606/2002 on the application of international accounting standards is geared towards the achievement of a harmonized, if not unified, financial information regime in the entire EU, in the hope that this would support the transparency and comparability of financial statements (Art.1). Indeed, the use of international accounting standards, such as International Accounting Standards (IAS) and IFRS (Art.2), should enhance the efficiency of the functioning of the single internal market (Art.1). One milestone in this EU legislative endeavour is Directive 2013/34, which targets financial statements with both financial and non-financial information. The deadline for the transposition of Directive 2013/34 was observed and expired in 2015. There are extrinsic and intrinsic indicators about its effectiveness and efficiency, as well as about its nature and meaning. The performed analysis of content, transposition strategies and top case law confirmed the underlying hypothesis about the feasibility to extract such a message.

The content of Directive 2013/34 and related transposition strategies suggest a rather soft, flexible and heterogeneous nature and meaning. The wording of Directive 2013/34 seems rather indicative and a myriad of legislative exemptions is provided. Transposition strategies are very variable, and the harmonization of the financial system regime, including CSR reporting, throughout the entire EU, exhibits dramatic quantitative and qualitative differences and therefore emphasises the legislative diversification of EU member state's jurisdictions. Quantitatively, certain EU member states merely changed one national statute, such as an accounting act or company act, or enacted a 'transposition' statute amending several national statutes. This can be contrasted with a confused and fragmented transposition entailing dozens and dozens of legislative changes. The 66 Czech legislative measures suggest an atrophy of the legal system and a lack of legislative vision, clouding the issue. Qualitatively, the enacted transposed measures across the EU hit different fields and areas. This testifies to the on-going differences in the approach to accounting, financial statement reporting and CSR based on the holistic meta-analysis. Boldly, each EU member state jurisdiction has embraced a different approach, and the readiness and drive towards the harmonization is rather arguable.

The case law of CJ EU regarding, or at least mentioning, Directive 2013/34 provides a completely different picture. Instead of an abundance of many diverse pieces, a monolithic mass appears. Four auxiliary cases re-confirm the existence and wording of Directive 2013/34 and the revolutionary case *C-508/13 Estonia v Parliament and Council* speaks as firmly as possible, even more. Estonia understood Directive 2013/34 as an instrument to truly harmonize and boost the financial reporting duty of businesses and went further with the reach of the duty, its scope and its transparent publication. However, certain provisions of Directive 2013/34 are contradicting the harmonization by setting exceptions and exemptions, and certain provisions even undermine 'a true and fair view'. As a matter of fact, Directive 2013/34 appears to be at the very edge of the constitutionality (see TFEU

and its principle of proportionality, subsidiarity and explanation).

Highly interestingly, this top case, *C-508/13 Estonia v Parliament and Council,* brings a unique perspective due to the exceptional opportunity of the direct action for the annulling of a part of, and alternately the entire, Directive 2013/34. Its critical and holistic meta-analysis clearly reveals that the CJ EU is extremely reluctant to go into the severability field and is almost as much reluctant to be responsive to strong annulment arguments. In contrast, the CJ EU likes to refer to its own case law. As a matter of fact, it seems impossible to achieve severability and almost impossible to achieve the nullification of an EU legislative measure. The CJ EU is determined to be a loyal member of the pro-integration tandem supporting the EU, and the preamble, along with other 'spirit' instruments, can be played successfully, even against constitutional concerns. The CJ EU seems to grant a very large margin of discretion to the EC, the Council of EU and the European Parliament in their understanding and application of top TEU and TFEU principles, such as the principle of subsidiarity and principle of proportionality (Art.3). The use of the requirement for stating reasons (Art.296) appears totally futile, i.e. it unfortunately does not come off as any firm support for actions for annulment.

Specifically, *C-508/13 Estonia v Parliament and Council,* along with other cases, indicates that the nature and the meaning of Directive 2013/34 are not single and literate. Assuming that Directive 2013/34 is here to make businesses report more effectively, efficiently, transparently, truly and in a more harmonized manner is wrong. The ultimate protégée and beneficiary of Directive 2013/34 is neither the general public nor the consumers, investors and other stakeholders. The resulting mechanism is very far from being unified or even compatible. This might sound absurd.

Well, *C-508/13 Estonia v Parliament and Council* has a touch of absurdity, because it can be, with but slight exaggeration, concluded that Estonia's drive to vigorously pursue IFRS, CSR reporting, and so on was stopped by Directive 2013/34, which, contrary-wise, one would have thought, should have supported financial reporting, CSR and indirectly the implementation of IFRS. The case *C-508/13 Estonia v Parliament and Council* basically confirmed the intentional multitude of meanings of Directive 2013/34 and upgraded the Directive 2013/34 to the status of a full harmonization instrument. Boldly, Estonia was 'too good', and the CJ EU ruled against it by perceiving Directive 2013/34 as more a fragmentation than harmonization instrument. This is an extremely deleterious, serious proposition deserving future studies entailing transpositions of many other Directives. The suspicion of pushing for lower standards in the name of integration, competitiveness and small businesses and underplaying the objective nature of key EU principles needs to be removed. After all, *C-508/13 Estonia v Parliament and Council* is not only about Directive 2013/34, but as well about TFEU and the entire EU constitutional trio.

8 Conclusions

Prima facia, the harmonization of financial and even non-financial reporting via Directive 2013/34 in the entire EU appears to be a step in the right direction, i.e. effective, and its transposition seems to be done properly and within deadlines, i.e. efficiently. However, a study of the content of Directive 2013/34 and national transposition strategies, and especially of the top case law, provides a different picture and confirms the hypothesis that there are valuable and so-far-neglected indices about the EU conformity in terms of perception of the nature and meaning of the Directive 2013/34/EU and even about modern European integration in general.

First, the content analysis of Directive 2013/34 and the quantitative and qualitative analyses of transposition strategies reveal many shades and options and imply a lack of a genuine commitment to establish a fully harmonized, if not unified, reporting regime in the EU. Second, the CJ EU with its case law demonstrates the will to maintain such a status quo and the reluctance to address the fragmentation of the current regime. Third, the severability, principle of proportionality, principle of subsidiarity and even the duty to state reasons, along with the willingness to go to higher IFSR standards, cannot challenge or even modify the EU's vision projected in Directive 2013/34. Fourth, direct actions have minimal chances to succeed, the burden is heavily on claimants and the severability method is not available. Next, the CJ EU perceives its own case law as a clear source of law, refers to it and uses it as an argument against arguments based on the EU primary and secondary laws. Finally, neither the Directive 2013/34 per se nor the CJ EU perceives as the ultimate beneficiary the public-at-large or customers or investors.

In sum, key EU institutions appear to be patently unanimous in endorsing Directive 2013/34 and its regime, and this despite its fragmented nature, problematic effectiveness and efficiency, serious challenges and strong arguments referring to the TEU and TFEU. Key EU institutions accept that EU member states differ dramatically in their attitude, manner and commitment regarding the transposition of Directive 2013/34.

The nature of Directive 2013/34 is fragmented, but it is strictly enforced. There are many meanings of Directive 2013/34, but they must be all observed. Directive 2013/34, its transposition and case law provide a set of messages showing a more colourful picture of the EU and the EU law regarding financial reporting, even in general. It leads to serious questions and raises important concerns. If nothing else, the mentioned indices are worthy of further exploration, since they could be pivotal for further improvement of the harmonized regime of financial and non-financial reporting, for boosting of CSR and for supporting of European integration, competitiveness and its legitimacy. The EU and EU institutions, EU member states and even Europeans should recognise that and engage in a deeper discussion about regimes to be harmonized and respect the already-achieved enhancements.

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