MacGREGOR, Robert Kenyon, KRATOCHVÍLOVÁ, Monika & MacGREGOR PELIKÁNOVÁ, Radka. Transposition of Directive 2013/34/EU on Financial Statements in the Light of the CJ EU Case Law. In: Jindřichovská, Irena; Dehning, Bruce. *7th International Scientific Conference on IFRS: Global Rules & Local Use – Beyond the Numbers*, Metropolitan University Prague, Oct 10-11, 2019, p. 53-66 of 436. ISBN 978-80-87956-96-0. Affiliation MUP, Internal Grant 68-03.

TRANSPOSITION OF DIRECTIVE 2013/34/EU ON FINANCIAL STATEMENTS IN THE LIGHT OF THE CJ EU CASE LAW

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Abstract:
Directive 2013/34/EU is a critical piece of EU legislation harmonizing the regime of financial and non-financial reporting in the entire EU, including reporting about Corporate Social Responsibility. Since its transposition deadline expired in 2015, it is feasible and highly illustrative to holistically study its transposition. The legislative and literature review constitutes a solid foundation for research in the Eur-Lex and Curia database. This allows for the extraction of data about whether and how EU member states transposed the Directive 2013/34/EU, in particular about the quantity and quality of national legislative measures that were used, and what critical issues emerged and led up to the top interpretation and application authority, the Court of Justice of EU. There are many questions about the effectiveness and efficiency of Directive 2013/34/EU its transpositions. Their common intersection represents the hypothesis that national transposition strategies along with the case law of the Court of Justice of EU conveys a message. This message not only testifies about already emerged issues and leads to suggestions for improvements, but in addition offers a very interesting perspective about various shades of modern European integration. Indeed, the comparative and critical Meta-Analysis of national transposition measures and issues, refreshed by Socratic questioning, centered around such a hypothesis brings pioneering results in the form of a very colourful picture worthy of further studies.

Keywords: *Corporate Social Responsibility (CSR), EU, financial and non-financial reporting, Directive 2013/34/EU, Transposition.*

1. INTRODUCTION

Modern European integration combines supranational and intergovernment approaches and aims to create the single internal market with the famous four freedoms of movement (MacGregor Pelikánová & MacGregor, 2018a), while overcoming global challenges for organizations (Piekarczyk, 2016). Its last stage, the post-Lisbon EU, is dominated by ten year strategies and currently applicable is the strategy Europe 2020. Under the auspices of a drive for smart, sustainable and inclusive growth of Europe 2020 (EC, 2010), the EU demonstrates a set of commitments. Indeed, Europe 2020 is a reference framework for activities at EU and at national and regional levels which entail one or more of the stated five targets: 75% employment, 3% of GDP for R&D, a 20% reduction in gas emissions, less than 10% school dropouts and at least 20 million fewer people in or at risk of poverty and social exclusion. These targets should help the EU and Europeans to be more aware about sustainability, become better suited for competition and more unified about common values. These ambitous endeavors require the active participation of all stakeholders and the EU law, along with EU member state's laws, should create an effective and efficient law framework for attainment thereof.

Specifically, legislative activities in the wave of Europe 2020 should motivate, if not outright order, European enterprises to embrace fair and vigorous competition standards, healthy financial planning and the sustainability concept. European enterprises should prepare and publish their annual reports with both financial and non-financial statements. This is done in order to foment some self-reflection and to offer a transparent compendium about their situation

from the strictly accounting perspective as well as from their Corporate Social Responsibility ("CSR") perspective (MacGregor Pelikánová & MacGregor, 2018c). CSR is a reflection of the modern concept of sustainability which emerged in the 1960's in the USA, was incorporated in the United Nations Brundtland Report 1987 and ultimately led to the merger of the systematic and visionary soft law self-regulation of businesses with normatively and moraly regulated corporate responsibility (Bansal & Song, 2017;. Hahn et al., 2018).

The EU decided to cross the Rubicon and enacted 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 aka Accounting Directive ("Directive 2013/34"). Directive 2013/34 imposes an obligation on certain large businesses (accounting units pursuant to accounting legislation) to publish information in their annual reports about environmental, social and employment issues, respect for human rights and the fight against corruption and bribery. Publication of non-financial information should create an understanding of the effects of an enterprise's operations on society. This information is intended for business management and a wide range of stakeholders, especially investors and customers. The broader intention of Directive 2013/34 is to contribute to the transformation to a sustainable economy. The framework of Directive 2013/34 was created with the intention of minimizing red-tape burdens. Namely, the Directive 2013/34 defines the types of information that should be made public, but leaves it up to the discretion of businesses, regarding how, and how detailed, this information should be provided. An essential criterion of Directive 2013/34 is businesses each providing information to understand the development, position, performance of their company and the impact of their activities. Thanks to this approach, the Directive's framework is also applicable to medium and small businesses.

Directive 2013/34/EU offers a full range of alternative solutions and has led to various efforts of EU member states, but the resulting harmonization is not totally successful (Mejzlík, 2016). Directive 2013/34 took effect on 19 July, 2013 and the deadline for transposition expired on 20 July, 2015. Due to amendments, the consolidated versions of Directive 2013/34 was issued on 11 December, 2014. EU member states complied and used a multitude of strategies to transpose Directive 2013/34 – starting with the enactament of one special Act, lex specialis, over a few legislative changes and ending with massive changes of many national Acts and statutes. Truth be told, the manner and method of transposition is secondary, while of primary concern is whether the mechanism and regime envisaged by Directive 2013/34 is truly an applicable and enforceable part of EU law as well as EU member state's laws. The ultimate assessment of the transposition of Directive 2013/34 and its realization in the real world is in the hands of the judges of the Court of Justice of EU ("CJ EU") to whom subjects can turn with direct actions based on Directive 2013/34, or within national courts with indirect actions for preliminary rulings about the interpretation of Directive 2013/34.

The transposed Directive 2013/34 is a critical piece of legislation for financial and even non-financial reporting throughout the entire EU. However, is this effective and efficient? Namely, what message about the effectiveness and efficiency of Directive 2013/34 and its transposition can be extracted from the legislation and case law? What critical issues have already emerged and how have they been addressed by the ultimate judiciary authority, the CJ EU? How can we take any advantage of that and improve the awareness and commitment regarding the harmonized financial and non financial reporting in the EU? Can we confirm the hypothesis that a message can be extracted? And what is this message?

So as to properly address these research questions and hypothesis, a legislative and literature review regarding Directive 2013/34 needs to be done (2.) and appropriate resources, research techniques and methods have to be identified (3.). Thereafter, a closer scrutiny of the transposition strategies should be analysed along with the top case law of the CJ EU regarding Directive 2013/34 (4.). The yielded results and related discussion (5.) propose answers, or at least indications for answers, to the research questions, confirm the hypothesis and offer an interesting perspective about the harmonization of financial and non financial reporting in the EU and about modern European integration in general (6.)

2. LEGISLATIVE AND LITERATURE REVIEW

In the EU, the majority of jurisdictions share the continental law tradition focusing on formalism (MacGregor Pelikánová, 2017), while the minority of jurisdictions share the common law tradition, oriented towards pragmatism (MacGregor Pelikánová & MacGregor, 2018a). Despite the blurred distinction between historical truth and reality (Chirita, 2014), one can state that the EU and the EU law and system mix both these traditions (Rogalska, 2018) as testified to by the three foundation documents belonging in the EU primary law and representing the current EU constitutional setting (MacGregor Pelikánová & MacGregor, 2019).

The first of them is the follow-up to the original Maastricht Treaty creating the EU in 1991, which has been revised and reformed and its post-Lisbon consolidated version is labelled as the Treaty on EU ("TEU"). The TEU has 55 articles and underlines the key features of the EU and EU law, such as the establishement of the internal market and the work for the sustainable development of Europe based on balanced economic growth and a highly competitive social market economy (Art.3). Doubtless, the TEU targets a highly competitive social market economy while promoting scientific and technological advances (MacGregor Pelikánová & MacGregor, 2018a). Further, the TEU provides clear competence borderlines. This is done by explicitly stating that competences not conferred upon the EU remain with 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, conferred share competence (i.e. not conferred exlusive 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 revamping of the original Rome Treaty creating the European Economic Community in 1957, which has been revised and reformed and its post-Lisbon consolidated version is labelled as the Treaty on the functioning of EU ("TFEU"). The TFEU has 358 Articles and further developes the TEU. The TFEU defines areas for which the EU has conferred exclusive compentencies (Art.3) and for which the EU has conferred shared competences (Art.4). The principal areas of shared competences include, among others, internal market, environmental, and consumer protection (Art.4). The TFEU focusses in detail on the internal market, including provisions covering the right of establishment (Art.49 et foll.) and consumer protection (Art.169) (MacGregor Pelikánová & MacGregor, 2018a), as well as on economic, social and territorial cohesion (Art.174 et foll.). Naturally, the TFEU deals as well 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).

Last, but not least, 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 prepared by the European Convention and proclaimed by three EU institutions – the European Parliament, Council of ministers and the European Commission 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) and a high level of consumer protection (Art.38). Often omitted, yet important in the extreme, is the explicit provision about the right to good

administration pursuant to which every person has their 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 two Directives with a pivotal importance for financial and non-financial reporting. The first is, of course, Directive 2013/34 and the second is Directive 2014/95/EU, regarding disclosure of non-financial and diversity information by certain large undertakings and groups ("Directive 2014/95") which updated Directive 2013/34 and added to it, among other items, the famous Art.19a about non-financial statements (MacGregor Pelikánová, 2019a). This amendment was clearly motivated by a desire to boost the CSR of enterprises, especially the category of the environment and R&D, perhaps ultimately rewards business' ethics and their interaction with CSR (Sroka & Szanto, 2018). As a matter of fact, Directive 2013/34 was amended by two Directives, Directive 2014/95 and Directive 2014/102/EU adapting Directive 2013/34 and addressing the access of Croatia ("Directive 2014/102"). However, since Directive 2014/102 merely extended the reach of Directive 2013/34 to Croatia and set the transposition deadline as of 20 July, 2015, it is often forgotten. In order to avoid any misunderstandings, in December, 2014, the EU issued a consolidated version of the Dirctive 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 contribution means, in short, reference to its consolidated version.

Inasmuch as Directive 2013/34 attempts to consolidate and combine several concepts and priorities, the terminology, definitions and foundations used are partially ambiguous and/or vague. For example, Directive 2013/34 deals with undertakings (Art.1), which are private limited companies, AKA limited liability companies, and public limited companies, AKA shareholder companies (Annex I). However, it imposes the duty to include non-financial statements in the management report upon large undertakings which are public-interest entities on their balance sheet dates as the criterion of the average number of 500 employees (Art.19a). However, 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, net turnover EUR 40 million, 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 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 & MacGregor, 2018c).

Further, with respect to reporting and especially regarding its form and publication, one should mention Directive (EU) 2017/1132 of 14 June, 2017, relating to certain aspects of company law ("Directive 2017/1132"). Directive 2017/1132 requires compulsory disclosures, by companies, of a set of documents, including the instrument of its constitution and accounting documents (Art.14). In the national register this disclosure is to be done, i.e. each EU member state has to have a central, commercial or company register where, for each company, is kept a file with such documents (Art.16) (MacGregor Pelikánová & MacGregor, 2018b). Obtained data is migrated to the central EU portal, eJustice.europe (MacGregor Pelikánová & MacGregor, 2017).

Each and every judge in the 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 top authorities for its interpretation. As stated above, it is done either based on direct actions, which are extremely rare, or based on indirect actions asking for preliminary rulings, which are very 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.

EU strategies and policies, which are not, per se, sources of law, since they are extremely influential should not be overlooked and this especially considering the political setting of the EU and the coordinated and mutually supporting work of the pro-integration internal tandem, the Europan Commission and CJ EU (MacGregor Pelikánová, 2012). Currently, one fundamental strategy is ending, Europe 2020, and a new one is about to emerge. Europe 2020 has been shaped by both formal and informal institutions (Pasimeni & Pasimeni, 2016) and ultimately prepared by the European Commission hoping-believing in the upcoming economic dominance of the EU in the global market (Stec & Grzebyk, 2017). Europe 2020 was an extremely ambitious strategy expecting the growth of competitiveness, innovations (Balcerzak, 2016a et 2016b; Świadek et al, 2019; MacGregor Pelikánová & MacGregor, 2019) as well as cohesion and solidarity (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 (Staníčková, 2017; Melecký, 2018) in a unified manner across the entire EU (Lajtkepova, 2016). Boldly, a study of Directive 2013/34 and its transposition, and their assessment, is akin to observing the EU ship-of-state in stormy waters of globalization during foggy weather. Poseiden adventure, anyone?

3. DATA AND RESEARCH METHOD

This contribution addresses the transposition of Directive 2013/34 in the light of the CJ EU case law. Namely it analyzes both its transposition strategies and challenges, as witnessed by national transposition legislative measures and especially the interpretation and application authority, the CJ EU and its case law specifically dealing with Directive 2013/34. This represents a battery of research sub-questions and should lead to an extraction of a message conveyed on both the national level as well as EU level, indicating perceptions and preliminary opinions about the effectiveness and efficiency of Directive 2013/34 as well as about critical issues unveiled by it. Naturally, such an understanding could be instrumental for future discussions about possible improvements and can lead to an increase of the effectiveness and efficiency of financial and non-financial reporting in the EU.

These ambitious targets cannot be hit merely by one study. This contribution should be, in other words, a pioneering first step in this direction, the first step on a longer journey. The keystone of this contribution is to review and appreciate various transposition strategies regarding Directive 2013/34 by EU member states (4.1) and to engage in a research and analysis of the CJ EU case law dealing specifically with Directive 2013/34 (4.2). The combined understanding of the transposition strategies and of the CJ EU case should facilitate the confirmation or rejection of the expectation (hypothesis) that a message can be drawn. And if the hypothesis is confirmed, then naturally it should be holistically and plainly stated what exactly this message says and what it means. Or, to put it another way, how can we take advantage of the established knowledge and thus improve the awareness and commitment regarding the harmonized financial and non-financial reporting in the EU?

In order to properly address these research sub-questions and hypothesis, the already accomplished legislative and literature review regarding Directive 2013/34 (2.) needs to be expanded in two directions by using a holistic, open minided Meta-Analysis able to address the the heterogeneous nature of the sources (Silverman, 2013) and 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 qualititative text analysis (Kuckartz, 2014).

First off, a legislative research and comparative critical analysis needs to be done regarding the transposition in EU member states. The Eur-Lex database and Aspi database are a prime source of information which can be further expanded by making national legislative searches (4.1). Secondly, a complex research of the CJ EU case law via 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 (4.2). The yielded results and related discussion (5.) propose 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 (6.).

4. TRANSPOSITION OF DIRECTIVE 2013/34 – NATIONAL LEGISLATIVE STRATEGIES AND THE CJ EU CASE LAW

Directive 2013/34 is a typical EU Directive requiring national transposition via legal Acts and statutes of each EU member state law within a deadline. Since the transposition deadline for Directive 2013/34 expired on 20 July, 2015 (Art.53) and was observed by EU member states, we benefit from a sufficiently long period to appreciate the transposition techniques and decisions about issues linked to the transposed Directive 2013/34 which are made by the top authority for that, the CJ EU.

4.1 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. Tables 1 and 2, below, show 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 with Directive 2013/34.

Table 1 – EU member states enacting 1-10 legislative measures to transpose Directive 2013/34

BE	BG	EE	GR	FR	HR	IT	CY	LV	LX	MT	NL	PL	PT	RO	SL	FI	UK
2	5	5	3	7	3	2	3	4	2	2	4	8	3	10	6	6	5

Source: Processing by the authors based on Eur-Lex

Table 1 indicates that the majority of EU member states opted for more than one and less than 11 legislative measures, as a matter of fact 5 EU member states (Denmark, Germany, Ireland, Spain and Austria) have managed to adjust their national law to the regime brought out by Direcive 2013/34 by enacting one single legal Act – statute. However, as indicated in Table 2, five other EU member states (the Czech Republic, Lithuania, Hungary, the Slovak Republic and Sweden) needed many more national legislative measures. As a matter of fact, leading the van is the Czech Republic with an unbelievable 66 legal Acts – statutes.

Table 2 – EU member states enacting 1 legislative measure or more than 20 legislative measures to transpose the Directive 2013/34

DK	GE	IR	ES	AT		CZ	LT	HU	SK	SW
1	1	1	1	1		66	62	29	17	21

Source: Prepared by the authors based on Eur-Lex

This rather suprising quantitative data about national transposition strategies needs to be complemented by qualitative data about the nature and type of such transposition measures. Table 3 reveals what was the single transposition act in the 5 EU member states which used this lean strategy.

Table 3 – EU member states enacting with 1 legislative measure the transposition of Directive 2013/34

DK	Act No 738 of 1 June 2015 amending the Financial Statements Act and various other Acts
GE	Act transposing Directive 2013/34/EU (Implementation Act — BilRUG) of 17 July 2015
IR	Companies (Accounting) Act 2017
ES	Act on auditors and accountant 2015
AT	Act amending Commercial Code, Act on shares, Act on Ltd, Act on cooperatives, SE Act, Tax Act

Source: Prepared by the authors based on Eur-Lex

As implied by Table 3, EU member states with a lean transposition strategy either amended one critical statute, such as an Accounting Act, or enacted one statute which 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 4.

Table 4 – Estonia – 5 legislative measures to transpose Directive 2013/34

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*
Law of Auditors Activities 1	Official publication: *Riigi Teataja* ; Number: *RT I, 30.12.2015, 8*
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 is the number of Czech legislative measures taken in order to achive the transposition of Directive 2013/34. Indeed, the amazing number 66 calls for an explanation, which naturally should start by figuring out what exactly these legislative measures are, see Table 5 with a selection of these measures.

Table 5 – Czech Republic – selected Czech legislative measures to transpose Directive 2013/34

Accounting Act	*Zákon č. 563/199 Sb., o účetnictví*
Act on Banks	*Zákon č. 21/1992 Sb., o bankách*
Act amending Income Tax Act	*Zákon č. 492/2000 Sb., kterým se mění zákon č. 586/1992 Sb., o daních z příjmů*
Act amending Accounting Act	*Zákon č. 353/2001 Sb., kterým se mění zákon č. 563/1991 Sb., o účetnictví*
Ordinances to implement Accounting Act	*Vyhlášky č. 500-503/2002 Sb., kterými se provádějí některá ustanovení zákona č. 563/1991 Sb., o účetnictví*
Act amending Accounting Act	*Zákon č. 437/2003 Sb., kterým se mění zákon č. 563/1991 Sb., o účetnictví*
Ordinances amending Ordinance	*Vyhlášky č. 473/2003 Sb., č. 545/2004 a 350/2007 Sb, kterými se mění vyhláška č. 501/2002 Sb.*
Act on Capital Market	*Zákon č. 256/2004 Sb., o podnikání na kapitálovém trhu*
Ordinances amending Ordinance	*Vyhláška č. 546/2004 a č. 399/2005 Sb. a 351/2007 a č. 411/2009 Sb., kterými se mění vyhláška č. 502/2002 Sb.*
Ordinances amending Ordinance	*Vyhlášky č. 397/2005 Sb., č. 349/2007 Sb. a 469/2008 Sb. , kterými se mění vyhláška č. 500/2002 Sb.*
Act amending Act on Information Systems	*Zákon č. 81/2006 Sb., kterým se mění zákon č. 365/2000 Sb., o informačních systémech veřejné správy*
Act amending Accounting Act	*Zákon č. 69/2007 Sb., kterým se mění zákon č. 563/1991 Sb., o účetnictví*
Act amending Accounting Act	*Zákon č. 304/2008 Sb., kterým se mění zákon č. 563/1991 Sb., o účetnictví*
Act on Auditors	*Zákon č. 93/2009 Sb., o auditorech a o změně některých zákonů*
Act amending Accounting Act	*Zákon č. 410/2010 Sb., kterým se mění zákon č. 563/1991 Sb., o účetnictví*
Civil Code	*Zákon č. 89/2012 Sb., občanský zákoník*
Act on Business Corporations	*Zákon č. 90/2012 Sb., o obchodních společnostech a družstvech (zákon o obchodních korporacích)*
Act amending Accounting Act	*Zákon č. 239/2012 Sb., kterým se mění zákon č. 563/1991 Sb., o účetnictví*
Etc.	*Etc.*

Source: Prepared by the authors based on Eur-Lex and Aspi

Table 5 proves out that these legislative measures represent both direct legislation and delegated legislation, from the field of accounting as well as from other fields, i.e. the transposition of the Directive 2013/34 entailed, among other items, changes in the Act on Income Tax, Act on Reserves, Act on Auditors, or Czech Accounting Standards for entrepreneurs (Mejzlík, 2016). Nevertheless, the most important are the amendment of the Czech Act No 563/1991 Coll. on accounting („Accounting Act"), or Ordinances implementing the Accounting Act. The search in the Aspi database reveals that the Accounting Act has been

amended 44 times, i.e. 44 statutes have been enacted to amend it during its three decades-long existence. This means that at least once per year the Czech Accounting Act is amended and, as a matter of fact, since 2013 it has been amended by six statutes and the majority of them for transposing Directive 2013/34. This beggars the question why this could not have been done via one statute, as for example in EU member states having the lean transposition strategy (Denmark, Germany, Ireland, Spain, Austria). The Czech atrophic and fragmented strategy ultimately led to the last version of the 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 entrprises, to which this legal duty applies, include 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 prepare as well 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 Commerical Register and its records (Art.42 et foll.) and specifically states that the Collection of documents kept by the Czech Commercial Register includes annual reports (Art.66).

4.2 The CJ EU case law about Directive 2013/34

Regardless of the transposition strategies and quantity and quality of national legislative measures for the transposition of Directive 2013/34, ever since 2015 there has been a harmonized regime regarding financial and non-financial reporting in the EU and all interpretation and application issues and challenges regarding it are to be ultimately resolved and decided by the top judiciary authority in this respect, 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 enactement and/or the expiration of the transposition deadline, Directives are the foundation for many indirect actions by which judges from the entire EU ask the CJ EU for preliminary rulings in re how to interpret and apply the provisions of the Directives, while seldom is seen direct action challenging the validity of Directives.

Surprisingly, the search via Curia brought a totally unexpected result. Namely, so far, there have not been any indirect actions asking for preliminary rulings about any Directive 2013/34 interpretation or application issue, but there were two direct action cases involving Directive 2013/34. The newer one was T-630/16 Dehtochema Bitumat v. ECHA and it dealt with the reduction of fees payable in the case of SMEs and therefore has only a marginal bearing for Directive 2013/34, i.e. the only common point is the definition of a SME as a vehicle to use a special regime. Critically important, in contrast to this, is the 2nd case, i.e. the older case. It is C-508/13 Republic of Estonia v European Parliament and Council of the EU, which was launched by the action on annulment on 23 September, 2013 and it was decided by the 2nd Chamber of the CJ EU on 18 June, 2015. Case C-508/13 addresses the obligations on some forms of undertakings in relation to financial statements in the light of the famous principles of subsidiary and proportionality. 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 small undertakings (SMEs) and the possibility of national exceptions. Alternatively, if these provisions could not be annulled, then Estonia asked for the annulment of the whole of Directive 2013/34.

Table 6 – 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.*
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 authors based on Eur-Lex

Firstly, the CJ EU in C-508/13 found 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 undertakings and addressees of financial information, and between large and small undertakings. Secondly, the CJ EU in C-508/13 had to scrutinize the entire Directive 2013/34 in the light of the principle of proportionality, the principle of subsidiarity and the obligation to state reasons.

Regarding the principle of proportionality, Estonia ranked as wrong those 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 IFRS which require additional information to 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. The CJ EU rejected this argument 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.

Regarding the principle of subsidiarity, Estonia claimed that it had already implemented a national policy on reducing the administrative burden by means of an electronic reporting system AKA “one-stop-shop”, see Art.5 TFEU. However, 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.

As far as the lack of explanation, Estonia argued that the EU legislature, in the 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. Since all their pleas failed, the action was dismissed.

5. RESULTS AND DISCUSSION

The EU drive for global competitiveness, digital readiness and accounting standardization is a current phenomena. 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 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 endeavor is Directive 2013/34, which targets financial statements along 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 worthy of exploration and able to convey a pioneering message, or even messages, about Directive 2013/34 and its transposition. Indeed, the performed analysis of transposition strategies and top case law confirmed the underlying hypothesis about the feasibility to extract such a message. As a matter of fact, it led to the identification and description of the following messages.

Leading off, although the transposition strategies seem to achieve the desired end, i.e. the harmonization of the financial system regime, including CSR reporting, throughout the entire EU, they exhibit dramatic quantitative and qualitative differences and therefore emphasize 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 about the ongoing differences in the approach to accounting, financial statement reporting and CSR. Boldly, each EU member state jurisdiction has embraced a different approach and the readiness and drive towards the harmonization is rather arguable, to put it mildly. Further, the holistic Meta-Analysis of the qualitative aspects of the transposition of Directive 2013/34 indicates that in certain jurisdictions, such as the Czech jurisdiction, the ongoing amendment upon amendment strategy is deepely embedded and seems to be accepted as an inevitable fatality.

Secondly, top case law offers a unique perspective due to the exceptional opportunity of the direct action for the annulling of a part of, and alterantly the entire, Directive 2013/34. This holistic Meta-Analysis of C-508/13 leads to the conclusion that the CJ EU is very reluctant to go into the severability field and, in the case of Directive 2013/34, as well as in the case of probably other EU legislation, it appears extremely unlikely to achieve the annulling of some provisions. Pursuant to C-508/13, perhaps, the action for the annulling of the entire EU instrument has a slightly better chance. However, the CJ EU seems to grant a very large margin of discretion to the European Commission, the Council of EU and 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 totaly futile, i.e. it unfortunately does not come off as any firm support for actions for annullment.

Further, it can be added that C-508/13 has a touch of absurdity, because it can be, with but slight exageration, concluded that Estonia's drive to pursue vigorously IFRS, CSR reporting, etc. was stopped by Directive 2013/34 which, contrary-wise, one would have thought, should have supported financial reporting, CSR and indirectly the implementation for IFRS. The case C-508/13 basically upgraded the Directive 2013/34 to the status of a full harmonization instrument. Bodly, Estonia was „too good" and the CJ EU ruled against it. This is an extremly deleterious, serious proposition deserving future studies entailing transpositions of many other Directives. The suspicion of pushing for lower standards in the name of integration and competitiveness and underplaying the objective nature of key EU principles needs to be removed.

6. 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 deeper study of national transposition strategies and of top case law provides a different picture and confirms the hypotheses that there is an underlying message to be extracted. Indeed, several messages can be extracted and they provide danger signals not only pertaining to Directive 2013/34 and its transposition, but even about modern European integration.

The quantitative and qualitative analysis of transposition strategies reveals dramatic differences in member state's attitudes and commitment to legislation on financial reporting and its manner. Some EU member states takes a lean approach while others throw in dozens and dozens of amendments. The case law further indicated that the top judiciary authority for Directive 2013/34 and its interpretation, the CJ EU, perceives this Directive as a full harmonization measure and rejects any attempts to annul it partially or in full. 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 into Directive 2013/34. In sum, key EU institutions appear to be patently unanimous in endorsing Directive 2013/34 and its regime, and this despite serious challenges and strong arguments refering to the TEU and TFEU, while EU member states differ dramatically in their attitude, manner and commitment regarding the transposition of Directive 2013/34. Indeed, Directive 2013/34 and its transposition provides a set of messages showing a more colorful picture of the EU and EU law, regarding financial reporting, and even in general. It leads to serious questions and raises important concerns. If nothing else, the EU and EU institutions should recognize that and engage in a deeper discussion about regimes to be harmonized and respect already previously achieved enhancements. As well, EU member states should use the transposition of EU directives as a positive opportunity to consolidate their law systems.

ACKNOWLEDGMENT

This contribution is the result of the Metropolitan University Prague research project no. 68-03 "Public Administration, Law Disciplines and Industrial Property"(2019) financed by means of support for the long-term and conceptual development of the research organisation.

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