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MEETING DOCUMENT

From:	Presidency
To:	Working Party on Company Law (Sustainability information)
Subject:	CSRD - Presidency note for the WP meeting on 16/09/2021 regarding the CSRD proposal

Delegations will find attached a Presidency note on CSRD with a view to the Company Law (Sustainability information) WP meeting on 16 September 2021.



Working Party on Company Law (G.4)

Corporate Sustainability Reporting Directive proposal (CSRD)

Meeting on the 16th of September 2021

1. Introduction

This note aims to frame the discussion on the remaining issues of the CSRD proposal for the sixth meeting of our Working Party dedicated to this file.

The Presidency aims to continue work on the proposal by examining the remaining parts of the proposal, including:

- Remaining proposed amendments to 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 (hereinafter referred to as the Accounting Directive);
- Proposed amendments to Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts (hereinafter referred to as the Audit Directive);
- Proposed amendments to Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (hereinafter referred to as the Audit Regulation); and
- Other proposed provisions, including Articles 5, 6, 7 and 8 of the CSRD proposal.

In our previous meetings, we have already discussed many important aspects and have received many comments, which were very much appreciated and will be duly taken into account. As we examine more of the proposal, we would be interested in receiving all comments, not limited to subject matter on the agenda.

The meeting will start with a Commission presentation, followed by an exchange of views. We will try to cover all the different items on the agenda if time allows. If not, the discussion will resume during the next meeting. Delegations are invited to send their written comments before the 16th of September if possible, if not by the 22nd of September at the latest, as the

Presidency will conduct an in-depth analysis in view of future drafting efforts.

At the meeting of our Working Party on the 16th of September 2021, we will discuss the following aspects of the CSRD proposal:

- **Sustainability reporting (remaining aspects):**
 - Article 1, paragraph 3 (Article 19a, only paragraphs 4, 5 and 6 of the Accounting Directive);
- **Publication requirement:**
 - Article 1, paragraph 8 (Article 30 of the Accounting Directive);
- **Assurance requirement:**
 - Article 1, paragraph 10 (Article 34 of the Accounting Directive);
- **Subject matter and definition:**
 - Article 3, paragraph 1 (Article 1 of the Audit Directive); and
 - Article 3, paragraph 2 (Article 2 of the Audit Directive);
- **Educational and professional qualifications:**
 - Article 3, paragraph 3 (Articles 6 and 7 of the Audit Directive);
 - Article 3, paragraph 4 (Article 8, paragraph 1 of the Audit Directive);
 - Article 3, paragraph 5 (Article 10, paragraph 1 of the Audit Directive);
 - Article 3, paragraph 6 (Article 11, point (a) of the Audit Directive); and
 - Article 3, paragraph 7 (Article 14, paragraph 2 of the Audit Directive);
- **Quality assurance systems:**
 - Article 3, paragraph 15 (Article 29, paragraph 1, points (d) and (h), paragraph 2, point (a) of the Audit Directive);
- **Acquired rights of statutory auditors:**
 - Article 3, paragraph 8 (Article 14a of the Audit Directive);
- **Organisation of the work:**
 - Article 3, paragraph 9 (Article 24b (1), (2a), (4), (5) of the Audit Directive);
- **Assurance standards for sustainability reporting:**
 - Article 3, paragraph 12 (Article 26a of the Audit Directive);
- **Exercise of delegation:**
 - Article 3, paragraph 21 (Article 48a (2), (3), (5) of the Audit Directive);

- **Assurance of consolidated sustainability reporting:**
 - Article 3, paragraph 13 (Article 27a of the Audit Directive);
- **Audit reporting:**
 - Article 3, paragraph 14 (Article 28 of the Audit Directive);
- **Audit fees:**
 - Article 3, paragraph 10 (Article 25 of the Audit Directive); and
 - Article 4, paragraph 23 (Article 14b of the Audit Regulation);
- **Prohibition of the provision of non-audit services:**
 - Article 4, paragraph 22 (Article 5(1) and (6) of the Audit Regulation);
- **Professional Ethics, Independence, Objectivity, Confidentiality and Professional Secrecy as regards the assurance of sustainability reporting:**
 - Article 3, paragraph 11 (Article 25b of the Audit Directive);
- **Investigations and Sanctions as regards the Assurance of Sustainability Reporting:**
 - Article 3, paragraph 16 (Article 30g of the Audit Directive);
- **Public Oversight and Regulatory Arrangements between Member States as regards the assurance of sustainability reporting:**
 - Article 3, paragraph 17 (Article 36a of the Audit Directive);
- **Appointment and dismissal as regards the assurance of sustainability reporting:**
 - Article 3, paragraph 18 (Article 38a of the Audit Directive);
- **Audit committee:**
 - Article 3, paragraph 19 (Article 39(6) of the Audit Directive);
- **Registration and oversight of third-country auditors and audit entities:**
 - Article 3, paragraph 20 (Article 45(1), (5) and (5a) of the Audit Directive).

2. **Sustainability reporting (remaining aspects)** – Article 1, paragraph 3 (Article 19a, only paragraphs 4, 5 and 6 of the Accounting Directive);

We have already addressed the aspect of sustainability reporting under Article 1, paragraph 3 of the proposal at our meeting on the 15th of July 2021. Paragraphs 4, 5 and 6 of proposed article 19a have not been examined and were placed on the agenda to provide an opportunity for Member States to comment.

Paragraph 4 requires information to be reported in accordance with sustainability reporting standards in Article 19b, while paragraph 5 specifies that small and medium sized undertakings are to report in accordance with sustainability reporting standards for SMEs in Article 19c. Paragraph 6 specifies that reporting in accordance with Article 19a, paragraphs 1 - 4, is deemed to satisfy the requirement of non-financial reporting in the third subparagraph of Article 19(1).

Q1: Would Member States wish to comment on the remaining aspects of sustainability reporting under Article 19a?

3. **Publication requirement** – Article 1, paragraph 8 (Article 30 of the Accounting Directive)

Article 1, paragraph 8 of the proposal amends Article 30 of the Accounting Directive as follows:

The first subparagraph of paragraph 1 is amended to require that annual financial statements and the management report be published in the single electronic reporting format under Article 19d.

A second subparagraph is inserted, extending the general publication requirement to include the opinion of the independent assurance services provider, where applicable.

A fourth subparagraph is inserted, placing (consolidated) sustainability reporting in accordance with Articles 19a and 29a outside the scope of the

exemption option for the publication of the management report in the third subparagraph.

A new paragraph 1a is inserted, requiring that Member States ensure that management reports of undertakings subject to Articles 19a and 29a (which contain sustainability information) are made available immediately:

- to the relevant officially appointed mechanism (OAM) for undertakings subject to Directive 2004/109/EC;
- to one of the OAMs of the Member State of registration for undertakings NOT subject to Directive 2004/109/EC.

Q2: Would Member States consider the proposed amendments to the Accounting Directive as regards the publication requirement appropriate?

4. **Assurance requirement** – Article 1, paragraph 10 (Article 34 of the Accounting Directive)

Article 1, paragraph 10 of the proposal amends Article 34 of the Accounting Directive as follows:

In paragraph 1, the second subparagraph is amended to exclude requirements on sustainability reporting under Article 19a from the scope of point (a)(ii).

In paragraph 1, second subparagraph, a further point (aa) is inserted, requiring statutory auditors or audit firms to express an opinion based on a limited assurance engagement regarding the compliance of sustainability reporting with relevant provisions of the Accounting Directive, as well as with Article 8 of Regulation (EU) 2020/852 (the Taxonomy Regulation). The level of assurance increases to reasonable upon adoption of relevant assurance standard by the Commission (see point 10 in present note).

Paragraph 3 is replaced entirely by new option for Member States to allow independent assurance services providers to express an opinion on the compliance of sustainability reporting.

Q3: Would Member States consider the proposed amendments to the Accounting Directive as regards the assurance requirement appropriate?

5. **Subject matter and definitions** – Article 3, paragraph 1 (Article 1 of the Audit Directive) and paragraph 2 (Article 2 of the Audit Directive)

Paragraph 1 of Article 3 amends the scope in Article 1 of the Audit Directive to include the assurance of annual and consolidated sustainability reporting, where performed by a statutory auditor or audit firm carrying out the statutory audit of financial statements.

In paragraph 2 of Article 3, Article 2 of the Audit Directive is amended as follows:

Firstly, it amends the definition of “statutory auditor” and “audit firm” to include the assurance engagements of sustainability reporting.

Secondly, it introduces the definitions of “sustainability reporting” and “assurance of sustainability reporting”. These terms are defined by reference to Article 2, point (18) of the Accounting Directive for the former, and by reference to proposed Article 34(1), second subparagraph, point (aa), as well as Article 34(2) of the Accounting Directive, for the latter.

Q4: Would Member States agree with the amended definitions of "statutory auditor" and "audit firm" as proposed?

Q5: Would Member States agree with the introduced definitions of "sustainability reporting" and "assurance of sustainability reporting" as proposed?

6. **Educational and professional qualifications** – Article 3, paragraph 3 (Articles 6 and 7 of the Audit Directive), paragraph 4 (Article 8, paragraph 1 of the Audit Directive), paragraph 5 (Article 10, paragraph 1 of the Audit Directive); paragraph 6 (Article 11, point (a) of the Audit Directive) and paragraph 7 (Article 14, paragraph 2)

Article 6 of the Audit Directive defines the educational qualifications for approval to carry out a statutory audit.

The second paragraph places the competent authorities (per Article 32) under an obligation to cooperate with each other in order to achieve a

convergence of the requirements referred to in this provision, taking into account the developments in auditing and in the audit profession, including convergence already achieved. Competent authorities are required to cooperate with the Committee of European Auditing Oversight Bodies (CEAOB) and the competent authorities referred to in Article 20 of Regulation (EU) No 537/2014 insofar as this convergence relates to statutory audits of public-interest entities. The changes proposed in CSRD will extend these requirements to sustainability reporting.

Article 7 of the Audit Directive defines that at least part of the examination of professional competence must be written, that it must guarantee the necessary level of theoretical knowledge required to carry out statutory audits and the ability to apply such knowledge in practice. The changes proposed in CSRD will ensure that statutory auditors' professional competence also includes the assurance of sustainability reporting.

Article 8 (1) of the Audit Directive lists the subjects that must be covered by the test of theoretical knowledge for statutory auditors. The existing list is amended to include subjects from the field of sustainability reporting. The changes proposed in CSRD aim to ensure that statutory auditors will gain the necessary knowledge relevant also to sustainability reporting.

Article 10 (1) of the Audit Directive, which presently sets out the conditions regarding the mandatory practical training of trainees in the auditing of annual financial statements, consolidated financial statements or similar financial statements, is amended to include the assurance of annual and consolidated sustainability reporting.

Article 11, point (a) of the Audit Directive determines the conditions for approval as statutory auditor for persons who don't meet the educational qualification criteria laid out in Article 6. Accordingly, a permit can be obtained on the basis of sufficient years of working experience in certain fields and with a completed examination of professional competence. For reasons of coherence, the list of relevant fields is amended to include sustainability reporting.

Paragraph 2 of Article 14 of the Audit Directive extends the content of the aptitude test for auditors from other Member States to include the assurance of sustainability reporting. The second paragraph of Article 14 contains the rules on the procedures that competent authorities should set

out for the approval of statutory auditors from a different Member State. It is amended to ensure that, where the Member State decides that the applicant seeking approval should be subject to an aptitude test, this test also covers the statutory auditor's adequate knowledge of the laws and regulations of the host Member State relevant to the assurance of sustainability reporting.

Q6: Would Member States consider the proposed amendments to the Audit Directive as regards professional qualifications to be appropriate?

7. **Quality assurance systems** – Article 3, paragraph 15 ([Article 29, paragraph 1, points \(d\) and \(h\), paragraph 2, point \(a\) of the Audit Directive](#))

Paragraph 1, point (d) and (h) and paragraph 2, point (a) of the Article 29 of the Audit Directive concern updates to the existing system of quality assurance review of statutory auditors and audit firms. The purpose of the amendment in point (d) of the above-mentioned article it is to ensure that the persons who carry out quality assurance reviews have the necessary professional education and relevant experience from the field of the assurance of sustainability reporting and sustainability reporting. The purpose of the amendment of point (h) is to ensure that quality assurance reviews take place also for the audits of sustainability reporting. The purpose of the amendment of paragraph 2, point (a) of the above mentioned article it is to ensure that the assurance reviewers have the necessary professional education and relevant experience from the field of the assurance of sustainability reporting and sustainability reporting.

Q7: Would Member States consider the proposed amendments to the Audit Directive as regards quality assurance systems to be appropriate?

8. **Acquired rights of statutory auditors** – Article 3, paragraph 8 (Art. 14a of the Audit Directive)

Paragraph 8 of Article 3 introduces a grandfather clause in the *new Article 14a of the Audit Directive*. It requires Member States to ensure that statutory auditors, approved or recognised (in a different Member State) before 1 January 2023, are allowed to continue with their activity (*first paragraph of Article 14a*), but also to ensure that they acquire the necessary knowledge

in sustainability reporting and the assurance of sustainability reporting (*second paragraph of Article 14a*) via the continuing education requirement in *Article 13*.

Q8: Would Member States agree with the proposed approach regarding statutory auditors approved before 1 January 2023?

Q9: Would Member States consider that the continuing education requirement of Article 13 is sufficient for statutory auditors approved before 1 January 2023?

9. Organisation of the work – Article 3, paragraph 9 (Article 24b (1), (2a), (4), (5) of the Audit Directive)

Article 3, paragraph 9 of the proposal amends Article 24b of the Accounting Directive as follows:

Paragraph 1 is amended to extend the requirements for key audit partners to the assurance of sustainability reporting when carried out by an audit firm.

A new paragraph 2a is inserted to align the duties of statutory auditors when carrying out the assurance of sustainability reporting with the duties of statutory auditors when carrying out the statutory audit.

In paragraph 4, point (c) is amended to include fees charged for the assurance of sustainability reporting in the client account record that a statutory auditor or audit firm is required keep for each audit client.

Paragraph 5 is amended to require the inclusion of information related to the assurance of sustainability reporting in the audit file, where appropriate.

Q10: Would Member States consider the proposed amendments to the Audit Directive as regards organisation of the work to be appropriate?

10. **Assurance standards for sustainability reporting** – Article 3, paragraph 12 (Article 26a of the Audit Directive)

Article 3, paragraph 12 of the proposal introduces a new article 26a into the Audit Directive.

Paragraph 2 of new Article 26a empowers the Commission to adopt assurance standards for sustainability reporting by means of delegated acts and specifies the conditions for their adoption.

Paragraph 1 of new Article 26a places Member States under the obligation to require statutory auditors and audit firms to carry out the assurance of sustainability reporting in compliance with assurance standards adopted by the Commission. Until the Commission adopts assurance standards covering the same subject matter, Member States are required to apply national assurance standards, procedures or requirements, which Member States are also required to communicate to the Commission at least three months prior to their entry into force.

Paragraph 3 specifies that, upon adoption of the standards for reasonable assurance by the Commission, the opinion referred to in Article 34(1), second subparagraph, point (aa), shall be based on a reasonable assurance engagement, rather than a limited assurance engagement, as will be the case prior to the adoption of such standards.

Q11: Would Member States agree with the proposed adoption by the Commission of assurance standards for sustainability reporting by means of delegated acts?

Q12: Would Member States consider the requirements for the adoption of assurance standards to be appropriate?

Q13: Do Member States agree with the automatic transition to a reasonable assurance requirement upon adoption of standards for reasonable assurance by the Commission?

11. **Exercise of delegation** – Article 3, paragraph 21 (Article 48a of the Audit Directive)

Article 3, paragraph 21 of the proposal amends Article 48a of the Audit Directive as follows:

In paragraph 2, a new subparagraph is added, specifying that the power to adopt delegated acts is conferred on the Commission for an indeterminate period of time.

Paragraph 3, specifying the conditions and modalities for the delegation of power to be revoked is amended to include powers conferred under Article 26a(2) regarding assurance standards for sustainability reporting.

Paragraph 5, specifying the conditions and modalities for objections by the European Parliament and by the Council regarding delegated acts is amended to include acts adopted under Article 26a regarding assurance standards for sustainability reporting.

Q14: Would Member States agree with the proposed modalities for the exercise of delegation?

12. **Assurance of consolidated sustainability reporting** – Article 3, paragraph 13 (Article 27a of the Audit Directive)

*Article 3, paragraph 13 of the proposal inserts a new Article 27a into the Audit Directive, extending the requirements of Article 27 as regards the audit of consolidated financial statements, *mutatis mutandis*, to the assurance of consolidated sustainability reporting.*

Q15: Would Member States consider the amendment appropriate?

13. **Audit reporting** – Article 3, paragraph 14 (Article 28 of the Audit Directive)

Paragraph 14 of Article 3 amends Article 28 Audit Directive in order to require the statutory auditor or the audit firm carrying out the assurance of sustainability reporting to present its/their results in the audit report, and to prepare the report in accordance with the assurance standards required as referred to in Article 26a.

Paragraph 2 sets the legal framework of what the statutory auditor or the audit firm carrying out the assurance of sustainability needs to present in their audit report. The latter needs to include the description of the scope of the assurance of sustainability reporting and identify the assurance standards in accordance with which the assurance of sustainability reporting was conducted. It should also include the statutory auditor's opinion on sustainability reporting.

Q16: Do Member States consider the information as regards the assurance of sustainability reporting to be included in the audit report as proposed in the paragraph to be appropriate?

14. Audit fees – Article 3, paragraph 10 (Article 25 of the Audit Directive) and Article 4, paragraph 23 (Article 14b of the Audit Regulation)

Paragraph 10 of Article 3 amends Article 25 of Audit Directive to require Member States to put adequate rules in place to prevent the fees for the assurance of sustainability reporting from being influenced or determined by the provision of additional services to the audited entity, or being based on any form of contingency.

Paragraph 2 of Article 4 amends Article 14 Audit Regulation in order to require statutory auditors and audit firms to inform the competent authority in question annually on which revenues, among the revenues from non-audit services, were generated from the assurance of sustainability reporting.

Q17: Do Member States find this provision to be appropriate?

15. Prohibition of the provision of non-audit services – Article 4, paragraph 22 (Article 5(1) and (6) of the Audit Regulation)

Paragraph 22 of Article 4 amends Article 5 of the Audit Regulation extending the rules of prohibition of non-audit services to the cases where the statutory auditor/audit firm also carries out the assurance of sustainability reporting, and introduces a new prohibited non-audit service: consulting services for the preparation of sustainability reporting, where the statutory auditor or audit firm carries out the assurance of sustainability reporting.

Q18: Do Member States find these requirements to be appropriate?

Q19: Do Member States agree with the proposed prohibited non-audit service?

16. Professional Ethics, Independence, Objectivity, Confidentiality and Professional Secrecy as regards the assurance of sustainability reporting – Article 3, paragraph 11 (Art. 25b of the Audit Directive)

Article 3, paragraph 11 of the proposal inserts a new Article 25b into the Audit Directive to extend the requirements of Articles 21 to 24a as regards the statutory audit of financial statements to the assurance of sustainability reporting.

Q20: Would Member States agree with the proposed provision?

17. Investigations and Sanctions as regards the Assurance of Sustainability Reporting – Article 3, paragraph 16 (Article 30g of the Audit Directive)

Article 3, paragraph 16 inserts Article 30g into the Audit Directive in order to clarify that the investigations and sanctions regime for statutory auditors and audit firms carrying out statutory audits also applies to audits of sustainability reporting.

Q21: Would Member States agree with the proposed provision?

18. Public Oversight and Regulatory Arrangements between Member States as regards the assurance of sustainability reporting – Article 3, paragraph 17 (Article 36a of the Audit Directive);

*Article 3, paragraph 17 of the proposal inserts a new Article 36a into the Audit Directive to extend the requirements of Articles 32, 33, 34 and 36 on the statutory audit of financial statements, *mutatis mutandis*, to the assurance of sustainability reporting.*

Q22: Would Member States agree with the proposed provision?

19. Appointment and dismissal as regards the assurance of sustainability reporting – Article 3, paragraph 18 (Article 38a of the Audit Directive)

Article 3, paragraph 18 of the proposal inserts a new Article 38a into the Audit Directive) to extend the requirements of Articles 37 and 38 as regards the statutory audit of financial statements to the assurance of sustainability reporting.

Q23: Would Member States agree with the proposed provision?

20. Audit committee – Article 3, paragraph 19 (Article 39(6) of the Audit Directive)

Article 3, paragraph 19 of the proposal amends Article 39(6) of the Audit Directive to include the assurance of sustainability reporting as follows:

Point (a) is amended to inform the administrative or supervisory body of the undertaking on the outcome of the assurance of sustainability reporting among the tasks of the audit committee.

Point (b) is amended to include the monitoring of the sustainability reporting process, including the digital reporting process referred to in Article 19d and the materiality assessment process, and submit recommendations or proposals to ensure its integrity, among the tasks of the audit committee.

Point (c) is amended to include sustainability reporting among the monitoring tasks of the audit committee as regards the undertakings' internal quality control and risk management, as well as internal audit (where applicable).

Point (d) is amended to include the performance of the assurance of the annual and consolidated sustainability reporting taking into account findings and conclusions by the competent authority among the monitoring tasks of the audit committee.

Point (e) is amended to include Article 25b in the list of relevant provisions for the review and monitoring tasks of the audit committee as regards the independence of statutory auditors and audit firms.

Q24: Would Member States agree with the proposed amendments?

21. **Registration and oversight of third-country auditors and audit entities** – Article 3, paragraph 20 (Article 45 of the Audit Directive)

Article 3, paragraph 20 amends Article 45 of the Audit Directive to ensure a consistent approach compared to statutory audit as follows:

Paragraph 1 is amended to include the registration of every third-country auditor and audit entity, which provides an audit report concerning annual or consolidated sustainability reporting of third-country undertakings with transferable securities admitted to trading on a regulated market of a Member State.

In paragraph 5, a new point (dd) is inserted to include the respect of relevant provisions on the assurance of sustainability reporting among the conditions under which Member States can register a third-country auditor.

Paragraph 5a is amended to include reference to paragraph 5, point (dd), discussed above.

Q25: Would Member States consider the proposed amendments to be appropriate?

22. **Other proposed provisions** – Article 5, Article 6, Article 7 and Article 8 of the proposal

Article 5 sets the transposition deadline for Articles 1 to 3 of the proposal to be the 1st of December 2022, with the provisions applying for financial years starting on or after the 1st of January 2023.

Article 6 specifies that Article 4 of the proposal is to apply to financial years starting on or after the 1st of January 2023.

Article 7 sets the entry into force on the 20th day following the publication of the Directive in the Official Journal of the European Union.

Article 8 specifies the addressees, taking into account the distinct nature of acts amended under Articles 1 – 3 on the one hand, and of the act amended under Article 4 on the other.

Q26: Would Member States agree with the proposed provisions?