



Council of the European Union
General Secretariat

**Interinstitutional files:
2021/0104 (COD)**

Brussels, 26 January 2022

WK 1093/2022 INIT

LIMITE

DRS

EF

ECOFIN

SUSTDEV

CODEC

EMPL

SOC

COMPET

WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Company Law (Sustainability information)
N° prev. doc.:	524/22
N° Cion doc.:	8132/21
Subject:	Proposal for a Directive of the European Parliament and of the COUNCIL amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting - Malta's comments - WP meeting 20/01/2022

Delegates will find herewith the comments of Malta presented during the WP meeting on 20/01/2022

Part 1 : Continuation of the Tour de Table

B. Articulation with other legislative initiatives

Sustainable finance: are there still questions of articulation after the clarifications of the compromise text with other texts on green finance, and with sectoral legislations applicable to financial institutions (e.g. Pillar 3 - CRR/CRD and Solvency 2 reporting)?

MT Comment: Malta believes that there needs to be consistency between CSRD and other financial related legislation such as the Pillar 3 CRR/CRD and Solvency 2 reporting.

C. Potential requests to adjust further the timeline

Area	Malta Remarks
Timeline for transposition by Member States	Malta believes that there should be a minimum of 18 months for this proposal to be transposed into national law. This is important to give MS the required time to prepare the necessary legislative text to be drafted and discussed within national parliaments. To be clearer, Malta believes that from the date of publication of the Directive in the official journal of the EU, 18 months need to elapse for the Transposition process to be concluded.
Timeline for the adoption by the Commission of the delegated acts for reporting standards	Malta believes that there need to be a minimum of 6 months for the Delegated Acts to be adopted by the Commission Services. This means that the first delegated acts would start to be adopted 24 months from the end of the transition process. In order for this Proposal to be implemented both by the public and private sector a significant amount of arrangements need to take place in terms of training the trainers such as auditors and the accounting staff of enterprises being impacted. The IT Departments of enterprises that will be reporting will need to prepare the necessary software programs. The development of IT programs takes a minimum of 1 year, therefore there needs to be a transitional arrangement when the proposal would first need to be adopted on a testing basis and after time the actual enforcement requirement kicks in. Malta firmly believes that the legislator takes note of the need of transition arrangements.
Timeline for the implement by companies	Malta firmly believes in the importance of this Directive as an important instrument to encourage enterprises to move towards a sustainable business model whilst also being important to encourage investors thereby improving the access to finance. For companies to prepare for the implementation of this Directive there needs to be both strategic and operational arrangements in place. Kindly the standards being prepared by EFRAG have not yet been published. Therefore, there is a lack of information in terms of the delegated acts standards. When preparing for this dossier, companies need to prepare both in terms of training and preparation of IT platforms. It is imperative that once the delegated acts are published there need to be sufficient transpositional

	arrangements for enterprises to prepare. One would certainly need a minimum period for the necessary arrangements to be in place whilst a longer grace period of when enforcement and sanctioning come into effect.
Timeline for the adoption by the Commission of assurance standards	Malta believes that there needs to be a sufficient time for the Commission to adopt the assurance standards.
Timeline for the transition to reasonable assurance of sustainability reporting	It is expected that EFRAG will be publishing different standards for different types of economic activity. Since this is a new area and the audit community needs to train and master sustainability reporting one needs to ensure that there is enough time for the audit community to get used to the assurance and reporting regime. Therefore, there needs to be a minimum of a transitional arrangement of 2 years before the full regime kicks in.

Part 2: article-by-article reading of the proposed adjustments to the audit provisions

Article 1 *Amendments to Directive 2013/34/EU*

[...]

(10) Article 34 is amended as follows:

(a) in paragraph 1, the second subparagraph is amended as follows:

(i) point (a)(ii) is replaced by the following:

‘whether the management report has been prepared in accordance with the applicable legal requirements, excluding the requirements on sustainability reporting laid down in Article 19a;’;

(ii) the following point (aa) is inserted:

(aa) where applicable, express an opinion based on a limited assurance engagement as regards the compliance of the sustainability reporting with the requirements of this Directive, including the compliance of the sustainability reporting with the reporting standards adopted pursuant to Article 29b or Article 29c, the process carried out by the undertaking to identify the information reported pursuant to those reporting standards, and the compliance with the requirement to mark-up sustainability reporting in accordance with Article 29d, and as regards the compliance with the reporting requirements of Article 8 of Regulation (EU) 2020/852.

(b) paragraph 3 is replaced by the following:

‘3. Member States may allow a different auditor than the one doing the statutory audit of financial statements to express the opinion referred to in paragraph 1, second subparagraph, point (aa).

MT Comment: Malta agrees with the discretion given to Member States in determining with the independent auditors can carry out the assurance process or not. **3a. Member States may allow an independent assurance services provider to express the opinion referred to in paragraph 1, second subparagraph, point (aa), provided that such independent assurance services provider is subject to requirements that are equivalent with to those set out in Directive 2006/43/EC of the European Parliament and of the Council** as regards the assurance of sustainability reporting as defined in Article 2, point 22 of that Directive, in particular with requirements on:

- i) training and examination, ensuring that independent assurance services providers acquire the necessary expertise on sustainability reporting and the assurance of sustainability reporting;
- ii) continuing education;
- iii) quality assurance systems;

iv) professional ethics, independence and objectivity, confidentiality and professional secrecy;
v) appointment and dismissal; and
vi) investigations and sanctions supervision.

vi) sanctions

Where an independent assurance services provider gives the opinion referred to in paragraph 1, second subparagraph, point (aa), this opinion shall be prepared in accordance with Article 28a of Directive 2006/43/EC.

Member States shall ensure that independent assurance services providers accredited before 1 January 2024 for the assurance of sustainability reporting in accordance with Regulation (EC) No 765/2008, are not subject to the training and examination requirements referred to in the first subparagraph, point i).

Member States shall ensure that independent assurance services providers that on 1 January 2024 are undergoing the accreditation process in accordance with the relevant national requirements are not subject to the **training and examination** ~~new accreditation~~ requirements **referred to in the first subparagraph, point (i)** as regards the assurance of sustainability reporting provided they finish the process by 1 January 2026.

MT Comments: Malta agrees with a phasing in approach of the training and examination requirements.

Member States shall ensure that the independent assurance services providers referred to in the third and fourth subparagraphs acquire the necessary knowledge in sustainability reporting and the assurance of sustainability reporting via the continuing education requirement referred to in the first subparagraph, point ii).

If a Member State makes use of the option to allow an independent assurance services provider, it shall also allow a different auditor than the one doing the statutory audit of financial statements to express the opinion referred to in paragraph 1, second subparagraph, point (aa).

MT Comment: MT fully agrees with the premise to allow the independent assurance services provider provide the required professional opinion.

'Article 26a

Assurance standards for sustainability reporting

1. Member States shall require statutory auditors and audit firms to carry out the assurance of sustainability reporting in compliance with assurance standards adopted by the Commission in accordance with paragraph 2.

Member States may apply national assurance standards, procedures or requirements as long as the Commission has not adopted an assurance standard covering the same subject-matter.

Member States shall communicate the assurance procedures or requirements to the Commission at least three months before their entry into force.

MT Comment: Spelling mistake on apply. Malta wishes that the 3 months period is amended to read 1 year.

ST 14268/21- Proposal ... , as regards corporate sustainability reporting (Presidency compromise text)

(26) Articles 19a(1) and 29a(1) of Directive 2013/34/EU require undertakings to disclose information about five reporting areas: business model, policies (including due diligence processes implemented), the outcome of those policies, risks and risk management, and key performance indicators relevant to the business. Article 19a(1) of Directive 2013/34/EU does not contain explicit

references to other reporting areas that users of information consider relevant, some of which align with disclosures included in international frameworks, including the recommendations of the Task Force on Climate-related Financial Disclosures. Disclosure requirements should be specified in sufficient detail to ensure that undertakings report information on their resilience to risks related to sustainability matters. In addition to the reporting areas identified in Articles 19a(1) and 29a(1) of Directive 2013/34/EU, undertakings should therefore be required to disclose information about their business strategy and the resilience of the business model and strategy to risks related to sustainability matters, any plans they may have to ensure that their business model and strategy are compatible with the transition to a sustainable and climate-neutral economy; whether and how their business model and strategy take account of the interests of stakeholders; any opportunities for the undertaking arising from sustainability matters; the implementation of the aspects of the business strategy which affect, or are affected by sustainability matters; any sustainability targets set by the undertaking and the progress made towards achieving them; the role of the board and management with regard to sustainability matters; the principal actual impacts connected with the undertaking's activities; and how the undertaking has identified the information that they report on. Once the disclosure of elements such as targets and the progress towards achieving them is required, the separate requirement to disclose the outcomes of policies is no longer necessary. **In order to protect the competitiveness of enterprises, the information needs to be provided at an aggregated / macro-level reporting. -> MT Comment**

MT Rationale: Improved transparency is critical to support the channelling of the necessary finance needed by enterprises to adopt a sustainable business model and meet the challenges and investment needs related to the digital and climate neutrality. One also understands that European enterprises are facing an uneven level playing field coming from third country operators. Within the spirit of the updated EU Industrial Strategy, open Strategic Autonomy and in order to safeguard Competitiveness information to be disclosed by enterprises needs to be within an aggregated format. This thereby significantly promotes transparency but also retains a balance and safeguard concerning competitiveness.

(29) Articles 19a(1) and 29a(1) of Directive 2013/34/EU do not specify whether the information to be reported is to be forward looking or information **about past performance**. There is currently a lack of forward-looking disclosures, which users of sustainability information especially value. Articles 19a and 29a of Directive 2013/34/EU should therefore specify that the sustainability information reported shall include forward-looking and retrospective, and both qualitative and quantitative **information, taking into account it might contain competitive sensitive information**. Reported sustainability information should also take into account short, medium and long-term time horizons and contain information about the undertaking's whole value chain, including its own operations, its products and services, its business relationships, and its supply chain, as appropriate. Information about the undertaking's whole value chain would include information related to its value chain within the EU and information that covers third countries if the undertaking's value chain extends outside the EU. **This information needs to be provided within an aggregated / macro-level format.**

Article 29a – paragraph 3 – subparagraph 1

The information referred to in paragraphs 1 and 2 shall contain forward-looking information and information about past performance, and **aggregated / macro-level** qualitative and quantitative information. This information shall take into account short, medium and long-term time horizons, where appropriate.

Article 29a – paragraph 3 – subparagraph 4

Member States may allow information relating to impending developments or matters in the course of negotiation to be omitted in exceptional cases where, in the duly justified opinion of the members of the administrative, management and supervisory bodies, acting within the competences assigned to them by national law and having collective responsibility for that opinion, the disclosure of such information would be seriously prejudicial to the commercial, **security and competitive** position of the group, provided that such omission does not prevent a fair and balanced understanding of the group's development, performance, position and impact of its activity.

“Chapter 6a – Sustainability standards”

(7)b Articles 29b and 29c have been added

Article ~~2~~19b

Sustainability reporting standards

1. The Commission shall adopt delegated acts in accordance with Article 49 to provide for sustainability reporting standards. Those sustainability reporting standards shall specify the information that undertakings are to report in accordance with Articles 19a and 29a and, where relevant, shall specify the structure in which that information shall be reported. In particular:

- (a) by 31 October 2022, the Commission shall adopt delegated acts specifying the information that undertakings are to report in accordance with paragraphs 1 and 2 of Article 19a, **and paragraphs 1 and 2 of Article 29a where appropriate**, and at least specifying information corresponding to the needs of financial market participants subject to the disclosure obligations of Regulation (EU) 2019/2088.
- (b) by 31 October 2023, the Commission shall adopt delegated acts specifying:
 - (i) complementary information that undertakings shall report with regard to the sustainability matters and reporting areas listed in Article 19a(2), where necessary;
 - (ii) information that undertakings shall report that is specific to the sector in which they operate. **The adoption of these delegated acts needs to be implemented within the principle of proportionality and the information is reported at an aggregated / macro-level thereby attaining a balance between enhanced transparency and safeguarding enterprise competitiveness. In the case of listed SMEs particular attention would be granted not to**

place additional administrative burden and reporting on the request of information of micro-enterprises (that is enterprises having a maximum of 9 full-time equivalence) that form part of the value chain. *-> MT comment

*Malta is placing this exclusion for micro-enterprises from passing through reporting requirements in order to make sure that they are not discriminated from having access through the procurement possibilities launched by large or listed enterprises.