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MEETING DOCUMENT

From:	Presidency
To:	Delegations
N° prev. doc.:	14268/21
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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 - Presidency note

Delegation will find attached a Presidency note on the CSRD proposal in view of the meeting of 8/12/2021.



Working Party on Company Law (G.4)

Corporate Sustainability Reporting Directive (CSRD) proposal

Meeting on the 8th of December 2021

PRESIDENCY NOTE

1. Introduction

Welcome to the seventh meeting of our Working Party under the Slovenian presidency and the tenth meeting of our Working Party dedicated to CSRD proposal.

Since the publication of the CSRD proposal on the 21st of April 2021, a lot of progress has been made. The Portuguese Presidency started the discussions regarding the proposal already in June 2021 with three meetings, which enabled us to continue the work as we took over the presidency.

The active participation of delegations during the first examination of the text allowed us to steer work on the proposal, culminating in a Presidency compromise proposal text, which is the subject of today's presentation. We are very grateful for all the comments provided, the drafting proposal we are presenting today is a result of contributions by all delegations.

In our previous meeting on the 8th of November 2021 we already started to discuss concrete drafting proposals about the following three topics:

- Intangibles,
- Timeline,
- Exemptions for subsidiary undertakings and parent undertakings.

We found your comments very constructive and we have considered them when preparing the final version of the Presidency compromise text proposal.



We feel privileged that an important step towards the transition to a sustainable economy was made under the Slovenian Presidency and we thank you all for your active participation and support.

In the coming pages, the present document aims to briefly outline the changes included in the Presidency compromise text proposal for your consideration.

2. Scope

With regard to the scope, additional clarity is provided by updates to Article 1, Article 2 and Article 19a of the Accounting Directive (hereinafter: AD).

Additional wording in Article 1, paragraph 3 AD clarifies that the coordination measures regarding sustainability reporting apply to banks and insurance companies as long as they meet the relevant size criteria.

The addition of a new paragraph 3a in Article 1 AD aims to avoid a duplication of reporting requirements under the CSRD and the SFDR. This is done via the exemption from the sustainability reporting requirements of the CSRD of financial products which have a legal personality and hence fall under the scope of the CSRD requirements. This exemption is subject to the condition that the relevant information on impacts on sustainability factors is included in SFDR product disclosures by financial market participants, and that the financial product is not self-managed.

In Article 2, point (5) AD, a definition of net turnover for credit institutions is added to take into account their specificities, thus creating a level playing field with regard to non-financial undertakings.

In Article 19a, paragraph 1, changes are introduced to clarify that sustainability reporting requirements apply to listed undertakings when the size criteria for small and medium sized undertakings is met, regardless of their condition of public-interest entities, and even if small and medium sized undertakings have not been defined for other Articles of the directive. Recital 15 further clarifies that size criteria in Article 3 AD applies also to public-interest entities which should not be regarded as large undertakings pursuant to Article 40 AD for the purposes of the reporting obligations under Articles 19a and 29a AD.

3. Location

A new subparagraph in the first paragraph of Articles 19a and 29a AD addresses MS comments regarding the location of the (consolidated) sustainability reporting. It builds on the initial Commission's proposal to



include sustainability information in the management report. It requires undertakings to present the information within the management report in a clearly identifiable way, but stops short of requiring a separate section. Following a less prescriptive approach in the directive would provide necessary flexibility for future developments in the field of integrated reporting without the need for amending the directive. Digitalisation will allow for the identification of the different information in the different parts of the management report. Moreover, as long as the information is clearly identifiable, the responsibilities of the auditors and the independent assurance service providers can be clearly delineated.

4. Level 1 / level 2 balance

For reasons of coherence, Articles 19b and 19c AD are moved to a new Chapter 6a – Sustainability reporting standards - and become Articles 29b and 29c AD. Therefore, the presidency note refers hereinafter to Articles 29b and 29c.

A new third subparagraph of Article 29b(1) AD envisages regular yearly consultations with Member States via the Expert Group on Sustainable Finance by the Commission, on EFRAG`s work programme as regards the development of sustainability standards. Member States will thus have the opportunity to be involved in the decisions about the standard-setting process in addition to the consultation of the Expert Group on Sustainable Finance by the Commission prior to the adoption of reporting standards via delegated acts and involvement through membership in EFRAG, already included in the CSRD proposal.

Recital 32 additionally explains that the adoption of sustainability reporting standards by means of Delegated Regulations will ensure harmonization.

5. Definitions

a. Sustainability matters

In Article 2, point (17), the definition of sustainability matters is redrafted to a more precise and clearer definition, which refers to the commonly known ESG and includes an explicit reference to human rights. Reference to sustainability factors as defined in the SFDR is maintained.

b. Key intangibles resources

In Article 2, point (19), the definition of intangibles is redrafted to limit its application to the field of sustainability reporting. The proposed definition has been further amended to delete the reference to 'erosion' for purely linguistic reasons, as a 'resource' is a means to pursue a goal. This wording



can in any case encompass cases where there is a decrease of a key intangible resource.

Recital 28 provides examples of intangible resources linked to sustainability which are not recognised assets but on which the business model of undertakings can fundamentally depend and which can be a source of creation of the value of undertakings.

6. Exemptions for subsidiary undertakings and parent undertakings

In paragraph 7 of Articles 19a and 29a AD, exemptions for subsidiary undertakings and parent undertakings are redrafted following the discussion at the Working Party meeting on the 8th of November 2021.

The proposed changes concern four aspects:

- Clarification of the equivalence regime: in the first subparagraph of paragraph 7, the revised wording provides an exemption of the (intermediate parent) subsidiary undertaking if the non-EU parent undertaking reports at consolidated level in accordance with equivalent sustainability reporting standards in accordance with the criteria adopted pursuant to Article 23 TD. Additional clarification is provided in Recitals 20 – 22;
- Publication and language requirement when the parent is an EU undertaking: in the third subparagraph of paragraph 7, wording is revised to provide greater clarity in relation to publication and language rules. If the consolidated management report is not in a language accepted by the MS or in a language customary in the sphere of international finance, MS may require publication in a language accepted by the MS of the exempted (intermediate parent) subsidiary undertaking or in a language customary in the sphere of international finance, at a choice of the exempted subsidiary undertaking / parent undertaking;
- Language requirement when the parent is a non-EU undertaking: in the fifth subparagraph of paragraph 7, wording is revised to provide greater clarity in relation to language rules. MS may require the publication of the consolidated management report in a language accepted by the MS of the exempted (intermediate parent) subsidiary undertaking or in a language customary in the sphere of international finance, at the choice of the exempted (intermediate parent) subsidiary undertaking.
- Permanently affiliated entities: the seventh paragraph of paragraph 7 is amended to ensure a consistent approach with the Capital



Requirements Regulation (CRR), whereby credit institutions, permanently affiliated to a central supervisory body are to be treated as subsidiaries of the central body under certain conditions.

7. Sustainability reporting standards

The Presidency compromise text proposal includes a number of amendments of former Article 19b, now Article 29b AD.

In paragraph 1, letter (a), reference to paragraphs 1 and 2 of Article 29a AD is added to include, in the first set of reporting standards to be adopted by 31 October 2022, the information referred to in paragraphs 1 and 2 of Article 29a AD where appropriate.

In paragraph 2, first subparagraph, the qualifier "representative" is deleted, as the subparagraph already requires that the information to be reported should be represented in a faithful manner, in line with the criteria referred to in Article 3(2) of Regulation (EC) No 1606/2002.

In paragraph 2, second subparagraph, letter (b) "social factors" an explicit reference to human rights is added. The objective is to have a term which would better summarize the information under letters (i), (ii) and (iii). Moreover, the term "human rights" is likely to go beyond "social" aspects in some cases.

In paragraph 2, second subparagraph, letter (b), point (i), additional wording "or work of equal value" is added to establish consistent wording with the Proposal for a Directive of the European Parliament and of the Council to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms.

In paragraph 2, second subparagraph, letter (c), two amendments are introduced to limit governance disclosures to aspects related to sustainability and reduce the overlap with disclosures in Article 20 AD.

- In point (i), the description of the role of the undertaking's administrative, management and supervisory bodies is required only with regard to sustainability matters, and no information is required on "composition" as such, which is already covered by Article 20 AD, but instead an explanation of the "capacity [of these bodies] to fulfil this role" is required. this refers to the idea of expertise/access to expertise of administrative, management and supervisory bodies, that is included in the Commission non-binding guidelines as regards climate-related reporting.



- In point (v), wording is revised to address concerns over possible overlap with the content of the corporate governance statement in Article 20 AD and to narrow the reported information to governance matters related to sustainability. Point (v) is moved to point (i)a under the same letter (c).

In paragraph 2, second subparagraph, letter (c), point (iv), the term "business partners" is replaced by "customers, suppliers and communities affected by the activities of the undertaking" in order to better capture the different categories of stakeholders.

A new paragraph 2a is inserted, containing wording on quality of reported information, previously contained in Article 19a, paragraph 3.

In paragraph 3, stronger emphasis is placed on the requirement on the Commission to take account of the subsequent list of EU legislation and global reporting initiatives and standards when adopting delegated acts pursuant to paragraph 1.

8. Sustainability reporting standards for SMEs

With regard to sustainability reporting standards for SMEs, the Presidency agrees with comments by delegations on the need to further specify the core disclosures to be included in the sustainability reporting standards for SMEs. However, the Presidency understands that EFRAG is currently undertaking the technical analysis to determine which are these elements, and suggests to incorporate them in the Level 1 wording later on in the process, building on EFRAG's technical work.

Reference to information referred to in Article 29a is omitted, as parent undertakings, which are SMEs, should not be allowed to prepare consolidated sustainability reporting in accordance with simplified standards.

We followed a proposal from a MS and included an optional use of simplified reporting standards also for small and non-complex institutions as defined in Article 4 (1) point 145 of Regulation (EU) No 575/2013, given that the size thresholds of the Accounting Directive can be met by credit institutions that are considered small and non-complex institutions under Regulation (EU) No 575/2013.

9. Electronic Format

Article 19d AD is moved to a new Chapter 6b – Electronic Format and becomes Article 29d AD.



To address the Member States' comments regarding the use of advanced national electronic reporting formats, a subparagraph was added in each paragraph to provide the option for Member States to allow non-listed (parent) undertakings to prepare their (consolidated) financial statements in a different electronic format than the xHTML format referred to in Article 3 of Commission Delegated Regulation (EU) 2019/815. An additional explanation is added in Recital 48.

10. Corporate governance statement

In Article 20, paragraph 1, second subparagraph, point (a) is included alongside points (c), (f) and (g) in the list of elements that needn't be included in the corporate governance statement, provided this information is included as part of the undertaking's sustainability reporting.

In order to maintain the integrity of the corporate governance statement, an amendment is introduced to require the undertaking to include a reference to the sustainability reporting in the corporate governance statement, if it decides to include some of the elements of the corporate governance statement as part of the undertaking's sustainability reporting.

In the corresponding Recital 51 it is clarified that the auditor needs to give an opinion on all elements of the corporate governance statement in accordance with the requirements of Article 20, even if some information is included in sustainability reporting, as the information will be identifiable by the reference included in the corporate governance statement.

11. Publication requirement

Proposed changes include amendments of the wording of Article 30, paragraph 1a, regarding the requirement of making available (consolidated) management reports to officially appointed mechanisms (OAMs) only for non-listed undertakings.

The (consolidated) management reports containing sustainability reporting of listed undertakings will be already made available to the OAMs pursuant to the requirements in the Transparency Directive (TD).

Modification also resolves MS concerns about what is the deadline of making available (consolidated) management reports in the case of listed undertakings (as AD and TD have different deadlines). Pursuant to the TD, listed undertakings are required to make available (consolidated) management reports to the OAMs within 4 months, whereas pursuant to the paragraph 1a of Article 30 AD, non-listed undertakings are required to



make available (consolidated) management reports to the OAMs at the latest without delay following their publication in business registers.

Corresponding Recital 49 explains that Member States have the possibility to set up rules on how to avoid double filing, e.g. by requiring the business register to send management reports to the OAMs.

12. Exercise of delegated powers

The procedure of adopting delegated acts by the Commission outlined in Article 49 is aligned with proposed changes to Article 29b, with the aim of including a stronger reference to the consideration of international standard-setting initiatives and related EU legislation. Concretely, the technical advice provided by EFRAG must include an explanation on how such initiatives and legislation are taken into account.

The second subparagraph is technically redrafted so that the consultation with the Member State Expert Group on Sustainable Finance takes place on the draft delegated acts and not on technical advice provided by EFRAG.

13. Penalties

In Article 51 AD, reference to administrative measures and sanctions or administrative pecuniary sanctions is removed. The revised wording proposes a more general approach to provide Member States enough margin for manoeuvre to apply the sanctioning regime for sustainability reporting within the existing national systems and constitutional constraints. The proposed wording takes into account that several Member States have in place a system of criminal sanctions for both financial and sustainability reporting, whereas in some Member States no administrative sanctions may be imposed via the civil or criminal court.

The corresponding Recital 69a explains that when imposing penalties in accordance with Article 51 AD, Member States have to provide the possibility to impose pecuniary sanctions through administrative procedures and equivalent administrative sanctions, the possibility to initiate legal proceedings for the imposition of pecuniary sanctions, e.g. by courts, or both, in accordance with national rules and procedures.

14. Transposition and entry into application deadline

During the meeting of the Working Party on Company Law on the 8th of November 2021, the Presidency presented the compromise proposal for the



entry into application deadlines which received general support. However, some Member States suggested that sustainability reporting should apply first for undertakings required to report according to NFRD.

In order to allow for a phased approach and a smooth transition from the current reporting obligations to the new reporting rules, we redrafted the text following suggestions from Member States.

We believe this change will allow for the continuity of reporting and facilitate the implementation of new rules on sustainability reporting. It determines that undertakings which already report the non-financial information start sustainability reporting first, as they are already aware of the importance of reporting outside the scope of financial reporting. By starting sustainability reporting a year later than initially proposed, they are provided with enough time to fulfill the requirements of the CSRD by adjusting their internal procedures.

Our initial proposal was also adjusted to the fact that the CSRD proposal amends three directives (Articles 1 – 3), so the application dates of the new provisions need to be specified with reference to the appropriate directive.

15. Changes in the Amendments to Directive 2004/109/EC (Transparency Directive (TD))

In Article 4, paragraph 4 TD, modification requires public disclosure of assurance report on sustainability reporting when it is prepared by auditors other than statutory auditors carrying out audit of financial statements or by other independent assurance services providers.

In Article 4, paragraph 5 TD, modification clarifies that the requirements to draw up management report in accordance with AD applies to undertakings subject to TD provided that they meet the size thresholds prescribed in the relevant provisions of AD (Article 19, 19a, 19d(1) and 20 AD).

In Article 23, paragraph 4 TD, the second reference to 'accounting' standards is removed in order to allow for the determination of equivalence of sustainability reporting standards to be included in the mechanism. An explanation regarding the establishment of a mechanism for the determination of equivalence of standards is added in Recital 21.

16. Assurance of sustainability reporting

The auditing of financial reporting is regulated in Article 34 AD, where CSRD proposal adds an obligation to statutory auditors or audit firms to express



an opinion as regards the compliance of the sustainability reporting (when an undertaking is obliged to prepare sustainability reporting). This opinion might be given also by an independent assurance services provider (IASP), if a Member State decides to implement this option. The proposed provisions include also a revision of the Directive 2006/43/EC (Audit Directive) and specify in general that IASP should be subject to requirements that are consistent with those set out in Audit directive as regards the assurance of sustainability reporting.

The proposal raised many concerns from MS which addressed the need for more clear provisions (regarding the obligations and the transition to reasonable assurance) and the need to provide enough time for all stakeholders involved in the assurance of sustainability reporting.

As some of the concerns were justified there are many changes to the proposed provisions.

Due to the extensive changes of the proposed text it will be necessary to make some other amendments which we did not include yet because of insufficient time. We find it important to amend Article 16 of Audit Directive, as well as it is necessary that the register of the statutory auditors provides information about which auditors are qualified for sustainability reporting. We are aware that some other changes may be needed, so we invite delegations to suggest more concrete changes if they seem necessary.

A. Redrafting of Article 34 AD

i) Paragraph 1, second subparagraph

To reply to question from delegations we wish to add an explanation that the reference to Article 8 of Taxonomy Regulation (2020/852) covers also the Commission Delegated Act of 6th July 2021.

ii) Paragraph 3, first subparagraph

IASP should be subject to equivalent rules to those set out by Audit Directive. It should be left to each Member State to set out rules adjusted to the specificities of such services providers.

Paragraph 3 of Article 34 AD is redrafted to ensure a level playing field between statutory auditors and IASP by defining requirements that must be equivalent. The objective is that the assurance engagement carried out by a statutory auditor/audit firm and by an IASP have the same quality. This is further explained in the Recital 54.

iii) Paragraph 3, second, third and fourth subparagraph

A grandfathering clause is added for IASP for those, accredited by 1 January 2024 and those undergoing the accreditation process on 1 January 2024 (provided they finish the process by 1 January 2026).

An obligation of Member States is added to ensure that IASPs subject to grandfathering clause acquire the necessary knowledge in sustainability reporting and the assurance of sustainability reporting via the continuing education requirement.

iv) Paragraph 4

To provide for more clarity and consistency we believe that the proposed wording of Article 26a(3) of Audit Directive should be moved to Article 34 AD, as it contains the requirement to carry out a reasonable assurance engagement when standards for reasonable assurance are adopted. All requirements on what the auditor or the IASP should do should be kept together.

The transition to reasonable assurance is further explained in Article 26a by setting a fix date for the Commission to adopt standards for reasonable assurance.

B. Redrafting of the provisions in the Audit Directive**i) Qualification for assurance of sustainability reporting**

We followed Member States' suggestions that auditors should be able to choose if they want to gain knowledge and competences for sustainability reporting. This has consequences in the drafting of several articles:

- Article 1: Redrafting clarifies that all auditors are subject to requirements of Audit Directive as regard assurance of sustainability. It addresses Member States' comments regarding the situation when the assurance of sustainability reporting is done by an auditor who didn't audit the financial statements.
- Definition of statutory auditor and audit firm (Article 2 (a) points 2 and 3): The amendments provide for a voluntary option for statutory auditors and audit firms as regards the assurance of sustainability reporting.
- Educational qualifications (Article 6): A new paragraph 2 is added to require the need to comply with additional specific requirements on

educational qualifications for the assurance of sustainability reporting.

- Examination of professional competence (Article 7): A new paragraph 2 is added due to the specific requirement for examination for sustainability reporting, which is voluntary.
- Test of theoretical knowledge (Article 8, new paragraph 3): Since the qualifications for the assurance of sustainability reporting are voluntary for statutory auditors the necessary subjects are added into to the separate paragraph 3.
- Practical training (Article 10, paragraph 1, new second subparagraph): To ensure the proportionality of the requirement for practical experience for sustainability reporting, it should be shorter than for statutory audit.
- Qualification through long-term practical experience (Article 11): It would be slightly arbitrary to define how many years of professional experience in sustainability, of the 15 years required for the financial audit, would be necessary in order to approve an auditor for assurance of sustainability reporting. on the other hand, requiring additional years of practical experience would make access to the profession very difficult. Therefore, we deleted the proposed provision in point (a). In a future revision of the Audit Directive, the need to allow for access to profession via long-term practical experience could be assessed. Consequently an update in Article 12 was made to refer only to the relevant paragraphs of Article 8 that address knowledge as regards financial audit.
- Approval of statutory auditors from another Member State (Article 14, paragraph 2, new subparagraph): The new subparagraph is needed since the knowledge for the assurance of sustainability reporting is optional/voluntary and not part of the aptitude test for providing statutory audits.

All above mentioned changes also reflect in amended Recitals 55 and 56.

ii) Organisation of the work

- A definition of key sustainability partner(s) was added in Article 2, point 16a.
- Article 24b is redrafted to ensure that when sustainability reporting is carried out by an audit firm, (a) key sustainability partner(s) is

designated. Amendments of the Article are necessary to ensure legal clarity.

- Paragraph 5 of Article 24b is redrafted where the file for assurance of sustainability report is excluded and is included in new paragraph 5a as a separate file.
- A new paragraph 5a of Article 24b is added with the requirements regarding the creation of the assurance file and retaining other documents by statutory auditor or audit firm for each assurance engagement of sustainability reporting. The last subparagraph includes the possibility when the statutory audit of annual financial statements and the assurance of sustainability reporting is carried out by the same auditor, that the information of the assurance file may be included in the audit file.
- Paragraph 6 of Article 24b is amended with the purpose to extend the obligations of statutory auditors and audit firms regarding keeping records of complaints also for the assurance of engagements of sustainability reporting.

All above mentioned changes are also reflected in amended Recital 57.

- iii)** Grandfathering clause for auditors approved or recognised before 1 January 2024 and statutory auditors undergoing their approval process on 1 January 2024 (Article 14a and Recital 56)

A change is made to allow auditors who have been approved before 1 January 2024 and also auditors who are on that date still undergoing their accreditation process, to finish it without needing to meet the requirements to qualify for carrying out assurance engagements of sustainability if they are approved within the following 2 years after the entry into application of the requirements. By changing the year to 2026 in paragraph 3, the continuing education requirement applies to auditors that fall under both mentioned categories in case they want to qualify for the assurance of sustainability reporting it encompasses both cases.

- iv)** Member States' standards/processes until COM adopts assurance standards (Article 26a(1) and (3) and Recital 59)

The Article 26a(1) and (3) are redrafted as explained in Recital 59 with the purpose to ensure a harmonised approach to the assurance of sustainability reporting across Member States. The CEAOB should adopt guidelines to set out the procedures that the auditor should perform in order to draw its conclusions on the assurance of sustainability reporting until the

Commission adopts an assurance standard covering the same subject-matter.

- v) Transition to reasonable assurance linked to date of adoption of assurance standards for reasonable assurance – determination of the date for the adoption of these standards (Article 26a(2) and Recital 53)

Following Member States' comments, we suggest to fix the date by which the Commission will have to adopt standards for reasonable assurance. Consequently, this will fix the date of the transition to reasonable assurance. We believe an assessment subject to the outcome of which the transition to reasonable assurance would take place, is not legally operational in a directive. It would, in practice, translate into a need to revise the level 1 text, which we consider is not desirable.

We did not follow MS comments proposing a reference to the international assurance standards for the reasonable assurance, as the existing ones are not detailed enough for the assurance of sustainability reporting. When adopting the assurance standards we cannot oblige the Commission to follow the international standards because we do not know if there will be any proper ones available/developed at the time.

As explained the paragraph 3 of Article 26a is moved to Article 34 AD. Because a fixed date has been introduced for the adoption of standards, we need to ensure that the Commission receives technical input from the CEAOB to be able to adopt these in time. A new wording is now added to mirror language of Article 30(7), point (b) of Audit Regulation.

vi) Assurance report on sustainability reporting

New Article 28a is in accordance with the proposed changes to the Audit Directive, when a different auditor than the statutory auditor gives opinion on sustainability reporting, he/she is subject to Audit Directive. Therefore, it is appropriate to have a separate report for assurance of sustainability in case different auditors do the financial audit and the assurance of sustainability. If the same auditor is doing audit and assurance of sustainability, all information of the report for assurance of sustainability can be included in the audit report.

As we now have a separate report for assurance of sustainability reporting (see new Article 28a), the opinion on the assurance of sustainability reporting will not be included in the audit report – therefore, we need to specify which points of Article 34(1) need to be included in audit report (not



aa), which calls for the consequential changes introduced in Article 28 and Recital 61.

vii) Assurance of consolidated sustainability reporting

Now that we have a different assurance report (new Article 28a), references to Article 28 in Article 27 make it necessary to replicate article 27 for the assurance of consolidated sustainability reporting. Therefore, the Article 27a and the Recital 60 are redrafted.

viii) Other provisions

- In the title of Article 25b scepticism was added to ensure the consistency with the existing Article 21 of the Audit Directive.
- Article 29 was amended to ensure that the persons who carry out quality assurance reviews shall have appropriate professional education and relevant experience in the field of sustainability reporting where appropriate and that the quality assurance review extends to the assurance files and assessment with the assurance standards if it is necessary.
- To ensure more legal clarity, the proposed Article 30g is deleted and we amended Article 30, paragraph 1 and 2 in a way that existing provisions regarding the system of investigations and sanctions are applicable also for the assurance of sustainability reporting.
- In Article 30a, paragraph 1, a new point (dd) is inserted as a consequential amendment of new Article 28a regarding the assurance file.
- Article 32, paragraph 3, first subparagraph and paragraph 4, point (b) are amended with the aim to extend the existing provisions to the assurance of the sustainability reporting to ensure clarity. Therefore, there is no need to refer to this Article in proposed Article 36a, for clarity, it is better to make the necessary changes to Article 32.
- Article 37, paragraph 3 is amended to ensure that the existing provision regarding the appointment of statutory auditors or audit firms also applies for the assurance of sustainability reporting where applicable.
- Article 38, paragraph 1 is amended with the aim to extend the existing provision regarding dismissal and resignation of statutory auditors or

audit firms also to sustainability reporting or assurance procedures, where applicable.

- Article 45, paragraph 2, point (dd) is amended to ensure the consistency with the existing point (d) of the mentioned Article. Consequential amendments of Article 45, paragraph 6 are needed.

19. Changes to the Regulation EU No 537/2014 (Audit Regulation)

- i) Article 4, paragraph 1 and paragraph 2, second subparagraph including Recital 67

The assurance of sustainability reporting is not an audit service, as it is not part of the statutory audit and because a different auditor than the auditor carrying out the financial audit can give this opinion. In order to address Member States' comments about Article 5, setting the statutory audit and the assurance of sustainability reporting in contrast to non-audit services, we suggest to change the title of Article 4 of the Audit Regulation and paragraph 1 by distinguishing the fee for statutory audits and the assurance of sustainability reporting.

In addition, as the assurance of sustainability reporting is considered a non-audit service, given that it can be a different auditor that gives the opinion, and even an IASP, it could be interpreted that the assurance of sustainability reporting is not automatically a non-audit service 'required by Union or national legislation' from the statutory auditor. Therefore, to ensure legal certainty and to bring clarity, it is better to explicitly exclude the assurance of sustainability reporting from the 70% limit mentioned in the Article.

Article 4 indicates that the denominator for the calculation of the fee cap shall be composed of the 'fees obtained from the statutory audit'. Therefore, it is clear that this would not include the fees from the assurance of sustainability reporting. This also explains why considering the fees from the assurance of sustainability reporting part of the audit fees would not be appropriate and would create confusion. This way it is clear that the assurance of sustainability reporting does not count in the numerator for the 70% limit, and also does not add to the denominator as it is not a fee from the statutory audit.

- ii) Article 5, paragraph 4, second subparagraph, new Article 5a and Recital 67

In order to address Member States' comments about Article 5 setting the statutory audit and the assurance of sustainability reporting in contrast to



non-audit services, we suggest to introduce a minor modification to Article 5 and add a new Article 5a that addresses the prohibited non-audit services relevant when carrying out the assurance of sustainability reporting.

iii) Article 14, point (aa) and Recital 68

As explained in 19)i), the assurance of sustainability reporting is not an audit service, as it is not part of the statutory audit because a different auditor can provide this opinion. Article 4 indicates that the denominator for the calculation of the fee cap shall be composed of the 'fees obtained from the statutory audit'. So it is clear that this would not include the fees from the assurance of sustainability reporting. This also explains why the fees from the assurance of sustainability reporting cannot be considered part of the audit fees.

However, for clarity, we suggest to add a separate point (aa) in Article 14 for fees from the assurance of sustainability reporting, instead of referring to them as a part of the non-audit fees, so that this information is clearly provided and distinguished.