

Adjustments to the Second Compromise Text (5788/22)

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 50 and 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C [...], [...], p. [...].

Whereas:

- (1) In its communication on the European Green Deal adopted on 11 December 2019², the European Commission made a commitment to review the provisions concerning non-financial reporting of Directive 2013/34/EU of the European Parliament and of the Council.³ The European Green Deal is the European Union's new growth strategy. It aims to transform the Union into a modern, resource-efficient and competitive economy with no net emissions of greenhouse gases by 2050. It also aims to protect, conserve and enhance the Union's natural capital, and protect the health and well-being of citizens from environment-related risks and impacts. The European Green Deal aims at decoupling economic growth from resource use, and ensuring that all regions and citizens of the Union participate in a socially just transition to a sustainable economic system. It will contribute to the objective of building an economy that works for the people, strengthening the EU's social market economy, helping to ensure that it is future-ready and that it delivers stability, jobs, growth and investment. These goals are especially important considering the socio-economic damage caused by the COVID-19 pandemic and the need for a sustainable, inclusive and fair recovery. In its proposal of 4 March 2020 for a European Climate Law, the European Commission proposed to make the objective of climate neutrality by 2050 binding in the Union.⁴ Moreover, in its Biodiversity Strategy for 2030, the European Commission commits to ensure that by 2050 all of the world's ecosystems are restored, resilient, and adequately protected. This strategy aims to put Europe's biodiversity on a path to recovery by 2030.

² COM(2019) 640 final.

³ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

⁴ Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law) [2020/0036 (COD)]

- (2) In its *Action Plan: Financing Sustainable Growth* the Commission set out measures to achieve the following objectives: reorient capital flows towards sustainable investment in order to achieve sustainable and inclusive growth, manage financial risks stemming from climate change, resource depletion, environmental degradation and social issues, and foster transparency and long-termism in financial and economic activity⁵. The disclosure by undertakings of relevant, comparable and reliable sustainability information is a prerequisite for meeting those objectives. The European Parliament and the Council adopted a number of legislative acts as part of the implementation of the Action Plan on Financing Sustainable Growth. Regulation (EU) 2019/2088 of the European Parliament and of the Council⁶ governs how financial market participants and financial advisers are to disclose sustainability information to end investors and asset owners. Regulation (EU) 2020/852 of the European Parliament and of the Council⁷ creates a classification system of environmentally sustainable economic activities with the aim of scaling up sustainable investments and combatting greenwashing of financial products that unduly claim to be sustainable.

⁵ COM(2018) 97 final.

⁶ Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

⁷ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

Regulation (EU) 2019/2089 of the European Parliament and of the Council⁸, complemented by Commission Delegated Regulations (EU) 2020/1816⁹, (EU) 2020/1817¹⁰ and (EU) 2020/1818¹¹, introduces environmental, social and governance ('ESG') disclosure requirements for benchmarks administrators and minimum standards for the construction of EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks. Regulation (EU) No 575/2013 of the European Parliament and of the Council¹² requires large institutions which have issued securities that are admitted to trading on a regulated market to disclose information on ESG risks from 28 June 2022. The new prudential framework for investment firms set by Regulation (EU) 2019/2033 of the European Parliament and of the Council¹³ and Directive (EU) 2019/2034 of the European Parliament and of the Council¹⁴ contains provisions concerning the introduction of an ESG risk dimension in the supervisory review and evaluation process (SREP) by competent authorities, and contains ESG risks disclosure requirements for investment firms, applicable from 26 December 2022.

⁸ Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks (OJ L 317, 9.12.2019, p. 17).

⁹ Commission Delegated Regulation (EU) 2020/1816 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards the explanation in the benchmark statement of how environmental, social and governance factors are reflected in each benchmark provided and published (OJ L 406, 3.12.2020, p. 1).

¹⁰ Commission Delegated Regulation (EU) 2020/1817 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards the minimum content of the explanation on how environmental, social and governance factors are reflected in the benchmark methodology (OJ L 406, 3.12.2020, p. 12).

¹¹ Commission Delegated Regulation (EU) 2020/1818 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks (OJ L 406, 3.12.2020, p. 17).

¹² Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

¹³ Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1).

¹⁴ Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 5.12.2019, p. 64).

The Commission has also announced a proposal on a European Green Bond Standard in its Work Programme for 2021, following up on the Action Plan on Financing Sustainable Growth.

- (3) On 5 December 2019, in its conclusions on deepening the Capital Markets Union, the Council stressed the importance of reliable, comparable and relevant information on sustainability risks, opportunities and impacts, and called on the Commission to consider the development of a European non-financial reporting standard.
- (4) In its resolution on sustainable finance of 29 May 2018¹⁵, the European Parliament called for the further development of non-financial reporting requirements in the framework of Directive 2013/34/EU. In its resolution on sustainable corporate governance of 17 December 2020¹⁶, the European Parliament welcomed the Commission's commitment to review Directive 2013/34/EU and expressed the need to set up a comprehensive Union framework on non-financial reporting that contains mandatory Union non-financial reporting standards. The European Parliament called for the expansion of the scope of the reporting requirements to additional categories of undertakings and for the introduction of an audit requirement.
- (5) On 25 September 2015, the UN General Assembly adopted a new global sustainable development framework: the 2030 Agenda for Sustainable Development (the '2030 Agenda'). The 2030 Agenda has at its core the Sustainable Development Goals and covers the three dimensions of sustainability: economic, social and environmental. The Commission communication of 22 November 2016 on the next steps for a sustainable European future linked the Sustainable Development Goals to the Union policy framework to ensure that all Union actions and policy initiatives, both in and beyond the Union, take those goals on board at the outset.¹⁷ In its conclusions of 20 June 2017, the Council confirmed the commitment of the Union and its Member States to the implementation of the 2030 Agenda in a full, coherent, comprehensive, integrated and effective manner, in close cooperation with partners and other stakeholders.¹⁸

¹⁵ 2018/2007(INI).

¹⁶ A9-0240/2020 (INI).

¹⁷ COM(2016) 739 final

¹⁸ Council conclusions "A sustainable European future: The EU response to the 2030 Agenda for Sustainable Development", 20 June 2017.

- (6) Directive 2014/95/EU of the European Parliament and the Council¹⁹ amended Directive 2013/34/EU as regards disclosure of non-financial information by certain large undertakings and groups. Directive 2014/95/EU introduced a requirement on undertakings to report information on, as a minimum, environmental, social and employee matters, respect for human rights, and anti-corruption and bribery matters. With regard to these topics, Directive 2014/95/EU required undertakings to disclose information under the following reporting areas: business model, policies (including due diligence processes implemented), the outcome of the policies, risks and risk management, and key performance indicators relevant to the business.
- (7) Many stakeholders consider the term ‘non-financial’ to be inaccurate, in particular because it implies that the information in question has no financial relevance. Increasingly, however, the information in question does have financial relevance. Many organisations, initiatives and practitioners in this field refer to ‘sustainability’ information. It is therefore preferable to use the term ‘sustainability information’ in place of ‘non-financial information’. Directive 2013/34/EU should therefore be amended to take account of this change in terminology.

¹⁹ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (OJ L 330, 15.11.2014, p. 1).

- (8) The ultimate beneficiaries of better sustainability reporting by undertakings are individual citizens and savers. Savers who want to invest sustainably will have the opportunity to do so, while all citizens should benefit from a stable, sustainable and inclusive economic system. To realise these benefits, the sustainability information disclosed in undertaking's annual reports first has to reach two primary groups ('users'). The first group of users consists of investors, including asset managers, who want to better understand the risks and opportunities that sustainability issues pose to their investments and the impacts of those investments on people and the environment. The second group of users consists of organisations, including non-governmental organisations and social partners, that wish to better hold undertakings to account for their impacts on people and the environment. Other stakeholders may also make use of sustainability information disclosed in annual reports. The business partners of undertakings, including customers, may rely on this information to understand, and where necessary report on, the sustainability risks and impacts through their own value chains. Policy makers and environmental agencies may use such information, in particular on an aggregate basis, to monitor environmental and social trends, to contribute to environmental accounts, and to inform public policy. Few individual citizens and consumers directly consult undertaking's reports, but they may use such information indirectly such as when considering the advice or opinions of financial advisers or non-governmental organisations. Many investors and asset managers purchase sustainability information from third party data providers, who collect information from various sources, including public corporate reports.

- (9) There has been a very significant increase in demand for corporate sustainability information in recent years, especially on the part of the investment community. That increase in demand is driven by the changing nature of risks to undertakings and growing investor awareness of the financial implications of these risks. That is especially the case for climate-related financial risks. Awareness of the risks to undertakings and to investments resulting from other environmental issues, such as biodiversity loss, and from social issues, including health issues, is also growing. The increase in demand for sustainability information is also driven by the growth in investment products that explicitly seek to meet certain sustainability standards or achieve certain sustainability objectives. Part of that increase is the logical consequence of previously adopted Union legislation, notably Regulation (EU) 2019/2088 and Regulation (EU) 2020/852. Some of the increase would have happened in any case, due to fast-changing citizen awareness, consumer preferences and market practices. The COVID-19 pandemic will further accelerate the increase in users' information needs, in particular as it has exposed the vulnerabilities of workers and of undertaking's value chains. Information on environmental impacts is also relevant in the context of mitigating future pandemics with human disturbance of ecosystems increasingly linked to the occurrence and spread of diseases.
- (10) Undertakings themselves stand to benefit from carrying out high quality reporting on sustainability matters. The growth in the number of investment products that aim to pursue sustainability objectives means that good sustainability reporting can enhance an undertaking's access to financial capital. Sustainability reporting can help undertakings to identify and manage their own risks and opportunities related to sustainability matters. It can provide a basis for better dialogue and communication between undertakings and their stakeholders, and can help undertakings to improve their reputation. Moreover, a consistent basis for sustainability reporting by undertakings in the form of reporting standards should provide for the relevant and sufficient information and thus significantly decrease ad hoc requests for information.

- (11) The report on the review clause of the Non-Financial Reporting Directive (Directive 2014/95/EU), and its accompanying fitness check on corporate reporting, identified problems as to the effectiveness of that Directive²⁰. There is significant evidence that many undertakings do not disclose material information on all major sustainability-related topics. The report also identified as significant problems the limited comparability and reliability of sustainability information. Additionally, many undertakings from which users need sustainability information are not obliged to report such information.
- (12) In the absence of policy action, the gap between users' information needs and the sustainability information reported by undertakings is expected to grow. This gap has significant negative consequences. Investors are unable to take sufficient account of sustainability-related risks and opportunities in their investment decisions. The aggregation of multiple investment decisions that do not take adequate account of sustainability-related risks has the potential to create systemic risks that threaten financial stability. The European Central Bank and international organisations such as the Financial Stability Board have drawn attention to those systemic risks, in particular in the case of climate. Investors are also less able to channel financial resources to undertakings and economic activities that address and do not exacerbate social and environmental problems, which undermines the objectives of the European Green Deal and the Action Plan on Financing Sustainable Growth. Non-governmental organisations, social partners, communities affected by undertakings' activities, and other stakeholders are less able to hold undertakings accountable for their impacts on people and the environment. This creates an accountability deficit, and may contribute to lower levels of citizen trust in businesses, which in turn may have negative impacts on the efficient functioning of the social market economy. The lack of generally accepted metrics and methods for measuring, valuing, and managing sustainability-related risks is also an obstacle to the efforts of undertakings to ensure that their business models and activities are sustainable.

²⁰ Publication office: please insert reference to Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the review clauses in Directives 2013/34/EU, 2014/95/EU, and 2013/50/EU, and accompanying SWD-Fitness Check.

- (13) The report on the review clause of Directive 2014/95/EU, and its accompanying fitness check on corporate reporting, also recognised a significant increase in ~~information~~ requests for information about sustainability matters to undertakings in an attempt to address the existing information gap. In addition, ongoing expectations on undertakings to use a variety of different frameworks and standards are likely to continue and may even intensify as the value placed on sustainability information continues to grow. In the absence of policy action to build consensus on the information that undertakings should report, there will be significant increases in costs and burden for reporting undertakings and for users of such information.
- (14) The growing gap between users' information needs and the current reporting practices of undertakings makes it more likely that individual Member States will introduce increasingly divergent national rules or standards. Different reporting requirements in different Member States would create additional costs and complexity for undertakings operating across borders and therefore undermine the single market, and would undermine the right of establishment and the free movement of capital across the Union. Those different reporting requirements also make reported information less comparable across borders, undermining the capital markets union.
- (15) Articles 19a and 29a of Directive 2013/34/EU apply to large undertakings that are public-interest entities with an average number of employees in excess of 500, and to public-interest entities that are parent undertakings of a large group with an average number of employees in excess of 500 on a consolidated basis, respectively. In view of the growth of users' needs for sustainability information, additional categories of undertakings should be required to report such information. It is therefore appropriate to require all large undertakings and all undertakings listed on regulated markets, except micro undertakings, to report detailed sustainability information. Articles 19a and 29a explicitly set out the scope of the reporting requirements with reference to Articles 2 and 3 of Directive 2013/34/EU. Therefore, Articles 19a and 29a do not 'simplify' or 'modify' another requirement and the restriction of exemptions for public-interest entities in Article 40 of Directive 2013/34/EU does not apply. In particular, public-interest entities should not be treated as large undertakings for the purposes of the reporting obligations of Articles 19a and 29a, **i.e. small and medium sized public-interest entities should be allowed to report according to the simplified SME sustainability reporting standards.** In addition, all undertakings that are parent undertakings of large groups should prepare sustainability reporting at group level.

- (16) The requirement that also large non-listed undertakings should disclose information on sustainability matters is mainly driven by concerns about the impacts and accountability of such undertakings, including through their value chain. In this respect, all large undertakings should be subject to the same requirements to report sustainability information publicly. In addition, financial market participants also need information from those large non-listed undertakings.
- (17) The requirement that undertakings not established in the Union but with securities listed on regulated markets should also disclose information on sustainability matters responds to the needs of financial market participants for information from such undertakings in order to understand the risks and impacts of their investments, and to comply with the disclosure requirements laid down in Regulation (EU) 2019/2088.

(18) Considering the growing relevance of sustainability-related risks and taking into account that small and medium-sized enterprises (SMEs) listed on regulated markets comprise a significant proportion of all listed undertakings in the Union, in order to ensure investor protection it is appropriate to require that also those SMEs disclose information on sustainability matters. The introduction of this requirement will help to ensure that financial market participants can include smaller listed undertakings in investment portfolios on the basis that they report the sustainability information that financial market participants need. It will therefore help to protect and enhance the access of smaller listed undertakings to financial capital, and avoid discrimination against such undertakings on the part of financial market participants. The introduction of this requirement is also necessary to ensure that financial market participants have the information they need from investee undertakings to be able to comply with their own sustainability disclosure requirements laid down in Regulation (EU) 2019/2088. SMEs listed on regulated markets should, however, be provided with sufficient time to prepare for the application of the requirement to report sustainability information, due to their smaller size and more limited resources, and taking account of the difficult economic circumstances created by the COVID-19 pandemic. They should also be given the possibility to report according to standards that are proportionate to the capacities and resources of SMEs, and relevant to the scale and complexity of their activities. Non-listed SMEs can also choose to use these proportionate standards on a voluntary basis. The SME standards will set a reference for undertakings that are within the scope of the Directive regarding the level of sustainability information that they could reasonably request from SME suppliers and clients in their value chains.

(19) Directive 2004/109/EC of the European Parliament and of the Council²¹ applies to all undertakings with securities listed on regulated markets. In order to ensure that all undertakings with securities listed on regulated markets, including third country issuers, fall under the same sustainability reporting requirements, Directive 2004/109/EC should contain the necessary cross-references to any requirement on sustainability reporting in the annual financial report.

²¹ Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

(20) Article 23(4), first subparagraph, point (i), and Article 23(4), fourth subparagraph of Directive 2004/109/EC empower the Commission to adopt measures to set up a mechanism for the determination of equivalence of information required under the Directive, and for the establishment of general equivalence criteria regarding accounting standards, respectively. Article 23(4), third subparagraph, of Directive 2004/109/EC also empowers the Commission to take the necessary decisions on the equivalence of accounting standards that are used by third-country issuers. In order to reflect the inclusion of the sustainability requirements in Directive 2004/109/EC, the Commission should be empowered to establish a mechanism for the determination of equivalence of sustainability reporting standards applied by third-country issuers of securities, similar to existing Commission Regulation (EC) No 1569/2007²² which sets out the criteria for the determination of equivalence of accounting standards applied by third country issuers. For the same reason, the Commission should also be empowered to take the necessary decisions on the equivalence of sustainability reporting standards that are used by third country issuers. The competent authority of the home Member State of a third country issuer may consider that the third country issuer is compliant with the EU sustainability reporting obligations if it reports according to equivalent sustainability reporting standards. Those amendments will ensure consistent equivalence regimes for sustainability reporting obligations and for financial reporting obligations regarding the annual financial report.

²² Commission Regulation (EC) No 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council (OJ L 340, 22.12.2007, p. 66).

(21) Articles 19a(3) and 29a(3) of Directive 2013/34/EU currently exempt all subsidiary undertakings from the obligation to report non-financial information where such undertakings and their subsidiary undertakings are included in the consolidated management report of their parent undertaking, provided this includes non-financial sustainability information reported according to EU requirements. That exemption should also apply where the parent undertaking reporting at consolidated level is a third country undertaking reporting sustainability information in accordance with equivalent sustainability reporting standards. Given that Directive 2004/109/EC would foresee appropriate mechanisms to determine the equivalence of sustainability reporting standards, and given that both undertakings with and without securities listed on regulated markets should be required to report according to the same sustainability reporting standards, the measures adopted pursuant to Article 23(4), first subparagraph, point (i), and Article 23(4), fourth subparagraph of Directive 2004/109/EC establishing a mechanism for the determination of equivalence of standards should be put to use for determining the exemption of subsidiary undertakings of non-EU parent undertakings under the regime of Directive 2013/34/EU. In this sense, the subsidiary undertaking should be exempted when consolidated sustainability reporting is drawn up in a manner equivalent to European sustainability reporting standards, determined in accordance with the relevant measures adopted pursuant to Article 23(4), first subparagraph, point (i), and Article 23(4), fourth subparagraph of Directive 2004/109/EC.

(21)a It is necessary to ensure that sustainability information is easily accessible for users, and to bring transparency about which is the parent undertaking of the exempted subsidiary undertaking which is reporting at consolidated level. It is therefore necessary to require those subsidiary undertakings of EU parent undertakings to include in their management report the name of the parent undertaking, the web links to the consolidated management report of the parent undertaking and to the assurance opinion on sustainability reporting, and the fact that the undertaking is exempted from sustainability reporting obligations. In order to ensure the usability of the information, it is necessary to allow Member States to require the publication of the consolidated management report and the opinion on sustainability reporting, in a language accepted by the Member State by which the exempted subsidiary undertaking is governed, and that any necessary translation into this language is certified. Subsidiary

undertakings of non-EU parent undertakings should **also** publish the consolidated management report and the assurance opinion on sustainability reporting in a language accepted by the Member State by which the exempted subsidiary is governed to ensure that the relevant sustainability information meets the publication requirements in the EU, ensuring the digital access to this information.

- (22) Article 23 of Directive 2013/34/EU exempts parent undertakings from the obligation to prepare consolidated financial statements and a consolidated management report where those undertakings are subsidiaries of another parent undertaking that complies with that obligation. It should be specified, however, that the exemption regime for consolidated financial statements and consolidated management reports operates independently from the exemption regime for consolidated sustainability reporting. An undertaking can therefore be exempted from consolidated financial reporting obligations but not exempted from consolidated sustainability reporting obligations where its ultimate parent prepares consolidated financial statements and consolidated management reports in accordance with Union law, or in accordance with equivalent requirements if the undertaking is established in a third country, but does not prepare consolidated sustainability reporting in accordance with EU law, or in accordance with equivalent requirements if the undertaking is established in a third country.

(23) Credit institutions and insurance undertakings play a key role in the transition towards a fully sustainable and inclusive economic and financial system in line with the European Green Deal. They can have significant positive and negative impacts via their lending, investment and underwriting activities. Credit institutions and insurance undertakings other than those that are required to comply with Directive 2013/34/EU, including cooperatives and mutual undertakings, should therefore be subject to sustainability reporting requirements provided that they meet certain size criteria. Users of that information would thus be enabled to assess both the impacts of these undertakings on society and the environment and the risks arising from sustainability matters that these undertakings could face. The Accounting Directive applies three possible criteria to determine whether an undertaking is considered to be a “large undertaking”, which are the balance sheet total, net turnover and average number of employees during the financial year. The criterion of net turnover needs to be adapted for credit institutions and for insurance undertakings by referring to the definition of net turnover in Directive 1986/635 and in Directive 1991/674 instead of the general definition of Directive 2013/34/EU. To ensure coherence with the reporting requirements of Council Directive 86/635/EEC²³ on the annual accounts and consolidated accounts of banks and other financial institutions, Member States may choose not to apply sustainability reporting requirements to credit institutions listed in Article 2(5) of Directive 2013/36/EU of the European Parliament and of the Council²⁴.

²³ Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1).

²⁴ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

- (24) The list of sustainability matters on which undertakings are required to report should be as coherent as possible with the definition of ‘sustainability factors’ laid down in Regulation (EU) 2019/2088. That list should also correspond to the needs and expectations of users and undertakings themselves, who often use the terms ‘environmental’, ‘social’ and ‘governance’ as a means to categorise the three main sustainability matters. The list of sustainability factors laid down in Regulation (EU) 2019/2088 does not explicitly include governance matters. The definition of sustainability matters in Directive 2013/34/EU should therefore relate to environmental, social **and human rights**, and governance factors, ~~including human rights~~, and be based on the definition of ‘sustainability factors’ laid down in Regulation (EU) 2019/2088.

- (25) Articles 19a and 29a of Directive 2013/34/EU require reporting not only on information ‘to the extent necessary for an understanding of the undertaking's development, performance, position’, but also on information necessary for an understanding of the impact of the undertaking’s activities on environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters. Those articles therefore require undertakings to report both on the impacts of the activities of the undertaking on people and the environment and on how various sustainability matters affect the undertaking. That is referred to as the double-materiality perspective, in which the risks to the undertaking and the impacts of the undertaking each represent one materiality perspective. The fitness check on corporate reporting shows that those two perspectives are often not well understood or applied. It is therefore necessary to clarify that undertakings should consider each materiality perspective in its own right, and should disclose information that is material from both perspectives as well as information that is material from only one perspective.
- (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 and potential adverse 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.

- (27) To ensure consistency with international instruments such as the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises and the OECD Due Diligence Guidance for Responsible Business Conduct, the due diligence disclosure requirements should be specified in greater detail than is the case in Article 19a(1), point (b), and Article 29a(1), point (b) of Directive 2013/34/EU. Due diligence is the process that undertakings carry out to identify, prevent, mitigate and remediate the principal actual and potential adverse impacts connected with their activities and identifies how they address those adverse impacts. Impacts connected with an undertaking's activities include impacts directly caused by the undertaking, impacts to which the undertaking contributes, and impacts which are otherwise linked to the undertaking's value chain. The due diligence process concerns the whole value chain of the undertaking including its own operations, its products and services, its business relationships and its supply chains. In alignment with the UN Guiding Principles on Business and Human Rights, an actual or potential adverse impact is to be considered principal where it measures among the greatest impacts connected with the undertaking's activities based on: the gravity of the impact on people or the environment; the number of individuals that are or could be affected, or the scale of damage to the environment; and the ease with which the harm could be remediated, restoring the environment or affected people to their prior state.

- (28) Directive 2013/34/EU does not require the disclosure of information on intangibles resources other than intangible ~~assets~~resources recognised in the balance sheet. It is widely recognised that information on intangible assets and other intangible factors, including internally-generated intangibles, is underreported, impeding the proper assessment of an undertaking's development, performance and position and monitoring of investments. To enable investors to better understand the increasing gap between the accounting book value of many undertakings and their market valuation, which is observed in many sectors of the economy, adequate reporting on intangibles should be required from all large undertakings and all undertakings listed on regulated markets, except micro undertakings. Nonetheless, certain information on intangible resources is intrinsic to sustainability matters, and will therefore be part of sustainability reporting. For example, information about employees' skills, competencies, experience, loyalty to the undertaking and motivation for improving processes, goods and services, is sustainability information regarding social matters that could also be considered as information on intangible resources. Likewise, information about the quality of the relationships between the undertaking and its stakeholders, including customers, suppliers and communities affected by the activities of the undertaking, is sustainability information relevant to social or governance matters that could also be considered as information on intangible resources. These examples illustrate how in some cases it is not possible to distinguish information on intangible resources from information on sustainability matters.
- (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. 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.

- (30) Articles 19a(1) and 29a(1) of Directive 2013/34/EU require undertakings to include in their non-financial reporting references to, and additional explanations of, amounts reported in the annual financial statements. Those Articles do, however, not require undertakings to make references to other information in the management report or to add additional explanations to that information. There is currently thus a lack of consistency between non-financial information reported and the rest of the information disclosed in the management report. It is necessary to lay down clear requirements in this regard.
- (31) Articles 19a(1) and 29a(1) of Directive 2013/34/EU require undertakings to provide a clear and reasoned explanation for not pursuing policies in relation to one or more of the matters listed, where the undertaking does not do so. The different treatment of disclosures on the policies that undertakings may have, compared to the other reporting areas included in those articles, has created confusion among reporting undertakings and has not helped to improve the quality of the reported information. Therefore, there is no need to maintain this different treatment of policies in the Directive. The standards will determine what information needs to be disclosed in relation to each of the reporting areas mentioned in Articles 19a and 29a.

(32) Undertakings under the scope of Articles 19a(1) and 29a(1) of Directive 2013/34/EU may rely on national, Union-based or international reporting frameworks, and where they do so, they have to specify which frameworks they relied upon. However, Directive 2013/34/EU does not require undertakings to use a common reporting framework or standard, and it does not prevent undertakings from choosing not to use any reporting framework or standards at all. As required by Article 2 of Directive 2014/95/EU, the Commission published in 2017 non-binding guidelines for undertakings under the scope of that Directive²⁵. In 2019, the Commission published additional guidelines, specifically on reporting climate-related information²⁶. The climate reporting guidelines explicitly incorporated the recommendations of the Task Force on Climate-related Financial Disclosures. Available evidence indicates that those non-binding guidelines did not have a significant impact on the quality of non-financial reporting by undertakings under the scope of Articles 19a and 29a of Directive 2013/34/EU. The voluntary nature of the guidelines means that undertakings are free to apply them or not. The guidelines can therefore not ensure on their own the comparability of information disclosed by different undertakings or the disclosure of all information that users consider relevant. That is why there is a need for mandatory common reporting standards to ensure that information is comparable and that all relevant information is disclosed. Building on the double-materiality principle, standards should cover all information that is material to users. Common reporting standards are also necessary to enable the audit and digitalisation of sustainability reporting and to facilitate its supervision and enforcement. The development of mandatory common sustainability reporting standards is necessary to progress to a situation in which sustainability information has a status comparable to that of financial information. The adoption of sustainability reporting standards by means of Delegated Regulations will ensure harmonised sustainability reporting across the Union. Therefore, an undertaking would be compliant with the requirements of Articles 19a and 29a by reporting according to the sustainability reporting standards.

²⁵ Communication from the Commission *Guidelines on non-financial reporting (methodology for reporting non-financial information)* (C/2017/4234).

²⁶ Communication from the Commission *Guidelines on non-financial reporting: Supplement on reporting climate-related information* (C/2019/4490).

- (33) No existing standard or framework satisfies the Union's needs for detailed sustainability reporting by itself. Information required by Directive 2013/34/EU needs to cover information relevant from each of the materiality perspectives, needs to cover all sustainability matters and needs to be aligned, where appropriate, with other obligations under Union law to disclose sustainability information, including obligations laid down in Regulation (EU) 2020/852 and Regulation (EU) 2019/2088. In addition, mandatory sustainability reporting standards for Union undertakings must be commensurate with the level of ambition of the European Green Deal and the Union's climate-neutrality objective for 2050. It is therefore necessary to empower the Commission to adopt Union sustainability reporting standards, enabling their rapid adoption and ensuring that the content of sustainability reporting standards are consistent with the Union's needs.
- (34) The European Financial Reporting Advisory Group (EFRAG) is a non-profit association established under Belgian law that serves the public interest by providing advice to the Commission on the endorsement of international financial reporting standards. EFRAG has established a reputation as a European centre of expertise on corporate reporting, and is well placed to foster coordination between European sustainability reporting standards and international initiatives that seek to develop standards that are consistent across the world. In March 2021, a multi-stakeholder task force set up by EFRAG published recommendations for the possible development of sustainability reporting standards for the European Union. Those recommendations contain proposals to develop a coherent and comprehensive set of reporting standards, covering all sustainability matters from a double-materiality perspective. Those recommendations also contain a detailed roadmap for developing such standards, and proposals for mutually reinforcing cooperation between global standard-setting initiatives and standard-setting initiatives of the European Union. In March 2021, the EFRAG President published recommendations for possible governance changes to EFRAG if it were to be asked to develop technical advice about sustainability reporting standards.

These recommendations include offsetting up within EFRAG a new sustainability reporting pillar while not significantly modifying the existing financial reporting pillar. When adopting sustainability reporting standards, the Commission should take account of technical advice that EFRAG will develop. In order to ensure high-quality standards that contribute to the European public good and meet the needs of undertakings and of users of the information reported, EFRAG's technical advice should be developed with proper due process, public oversight and transparency, accompanied by cost benefit analyses, and be developed with the expertise of relevant stakeholders. To ensure that Union sustainability reporting standards take account of the views of the Member States of the Union, before adopting the standards the Commission should consult the Member State Expert Group on Sustainable Finance referred to in Article 24 of Regulation (EU) 2020/852 and the Accounting Regulatory Committee referred to in Article 6 of Regulation (EU) 1606/2002 on EFRAG's technical advice. The European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA) play a role in drafting regulatory technical standards pursuant to Regulation (EU) 2019/2088, and there needs to be coherence between those regulatory technical standards and sustainability reporting standards. According to Regulation (EU) No 1095/2010 of the European Parliament and of the Council²⁷, ESMA also plays a role in promoting supervisory converge in the enforcement of corporate reporting by issuers whose securities are listed on EU regulated markets and who will be required to use these sustainability reporting standards. Therefore, ESMA, EBA and EIOPA should be required to provide an opinion on EFRAG's technical advice.

²⁷ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

This opinion should be provided within two months from the date of receipt of the request from the Commission. In addition, the Commission should consult the European Environment Agency, the European Union Agency for Fundamental Rights, the European Central Bank, the Committee of European Auditing Oversight Bodies and the Platform on Sustainable Finance to ensure that the sustainability reporting standards are coherent with relevant Union policy and legislation. Where any of those bodies decide to submit an opinion, they shall do so within two months from the date of being consulted by the Commission.

- (35) Sustainability reporting standards should be coherent with other Union legislation. Those standards should in particular be aligned with the disclosure requirements laid down in Regulation (EU) 2019/2088, and they should take account of underlying indicators and methodologies set out in the various delegated acts adopted pursuant to Regulation (EU) 2020/852, disclosure requirements applicable to benchmark administrators pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council²⁸, the minimum standards for the construction of EU climate transition benchmarks and EU Paris-aligned benchmarks; and of any work carried out by the European Banking Authority in the implementation of the Pillar III disclosure requirements of Regulation (EU) No 575/2013. Standards should take account of Union environmental legislation, including Directive 2003/87/EC of the European Parliament and of the Council²⁹ and Regulation (EC) No 1221/2009 of the European Parliament and of the Council³⁰, and should take account of Commission Recommendation 2013/179/EU³¹ and its annexes, and their updates. Other relevant Union legislation, including Directive 2010/75/EU of the European Parliament and of the Council³², and requirements laid down in Union law for undertakings as regards directors' duties and due diligence, should also be taken into account.

²⁸ Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).

²⁹ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

³⁰ Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (*OJ L 342, 22.12.2009, p. 1*).

³¹ Commission Recommendation 2013/179/EU of 9 April 2013 on the use of common methods to measure and communicate the life cycle environmental performance of products and organisations (*OJ L 124, 4.5.2013, p. 1*).

³² Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

- (36) Sustainability reporting standards should take account of the Commission guidelines on non-financial reporting³³ and the Commission guidelines on reporting climate-related information³⁴. They should also take account of other reporting requirements in Directive 2013/34/EU not directly related to sustainability, with the aim of providing the users of the reported information with a better understanding of the development, performance, position and impact of the undertaking, by maximising the links between the sustainability information and other information reported in accordance with Directive 2013/34/EU.
- (37) Sustainability reporting standards should be proportionate, and should not impose unnecessary administrative burden on companies that are required to use them. In order to minimise disruption for undertakings that already report sustainability information, sustainability reporting standards should take account of existing standards and frameworks for sustainability reporting and accounting where appropriate. Those include the Global Reporting Initiative, the Sustainability Accounting Standards Board, the International Integrated Reporting Council, the International Accounting Standards Board, the Task Force on Climate-related Financial Disclosures, the Carbon Disclosure Standards Board, and CDP (formerly the Carbon Disclosure Project). Standards of the European Union should take account of any sustainability reporting standards developed under the auspices of International Financial Reporting Standards Foundation. To avoid unnecessary regulatory fragmentation that may have negative consequences for undertakings operating globally, European standards should contribute to the process of convergence of sustainability reporting standards at global level.

³³ 2017/C 215/01.

³⁴ 2019/C 209/01.

- (38) In its communication on the European Green Deal, the European Commission committed to support businesses and other stakeholders in developing standardised natural capital accounting practices within the Union and internationally, with the aim of ensuring appropriate management of environmental risks and mitigation opportunities, and reduce related transaction costs. The Transparent Project sponsored under the LIFE programme is developing the first natural capital accounting methodology, which will make existing methods easier to compare and more transparent while lowering the threshold for companies to adopt and use the systems in support of future-proofing their business. The Natural Capital Protocol is also an important reference in this field. While natural capital accounting methods serve principally to strengthen internal management decisions, they should be duly considered when establishing sustainability reporting standards. Some natural capital accounting methodologies seek to assign a monetary value to the environmental impacts of companies' activities, which may help users to better understand those impacts. It is therefore appropriate that sustainability reporting standards should be able to include monetised indicators of sustainability impacts if that is deemed necessary.
- (39) Sustainability reporting standards should also take account of internationally recognised principles and frameworks on responsible business conduct, corporate social responsibility, and sustainable development, including the UN Sustainable Development Goals, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, the OECD Due Diligence Guidance for Responsible Business Conduct and related sectoral guidelines, the UN Global Compact, the Tripartite Declaration of Principles of the International Labour Organisation concerning Multinational Enterprises and Social Policy, the ISO 26000 standard on social responsibility, and the UN Principles for Responsible Investment.

- (40) It should be ensured that the information reported by undertakings in accordance with the sustainability reporting standards meet the needs of users. The reporting standards should therefore specify the information that undertakings are to disclose on all major environmental factors, including their impacts and dependencies on climate, air, land, water and biodiversity. Regulation (EU) 2020/852 provides a classification of the environmental objectives of the Union. For reasons of coherence, it is appropriate to use a similar classification to identify the environmental factors that should be addressed by sustainability reporting standards. The reporting standards should consider and specify any geographical or other contextual information that undertakings should disclose to provide an understanding of their principal impacts on sustainability matters and the principal risks to the undertaking arising from sustainability matters.
- (41) With regard to climate-related information, users are interested in knowing about undertakings' physical and transition risks, and about their resilience to different climate scenarios. They are also interested in the level and scope of greenhouse gas emissions and removals attributed to the undertaking, including the extent to which the undertaking uses offsets and the source of those offsets. Achieving a climate neutral economy requires the alignment of greenhouse gas accounting and offset standards. Users need reliable information regarding offsets that addresses concerns regarding possible double-counting and overestimations, given the risks to the achievement of climate-related targets that double-counting and overestimations can create. The reporting standards should therefore specify the information undertakings should report with regard to those matters.
- (42) Achieving a climate neutral and circular economy and a toxic-free environment requires the full mobilisation of all economic sectors. Reducing energy use and increasing energy efficiency is key in this respect as energy is used across supply chains. Energy aspects should therefore be duly considered in sustainability reporting standards, in particular in relation to environmental matters.

- (43) Sustainability reporting standards should specify the information that undertakings should disclose on social factors, including employee factors and human rights. Such information should cover the impacts of undertakings on people, including on human health. The information that undertakings disclose about human rights should include information about forced labour in their value chains where relevant. Reporting standards that address social factors should specify the information that undertakings should disclose with regard to the principles of the European Pillar of Social Rights that are relevant to businesses, including equal opportunities for all and working conditions. The European Pillar of Social Rights Action Plan adopted in March 2021 calls for stronger requirements on undertakings to report on social issues. The reporting standards should also specify the information that undertakings should disclose with regard to the human rights, fundamental freedoms, democratic principles and standards established in the International Bill of Human Rights and other core UN human rights conventions, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, the fundamental conventions of the International Labour Organisation, and the Charter of Fundamental Rights of the European Union.
- (44) Users need information about ~~about~~ governance factors. Governance factors that are most relevant to users are listed by authoritative reporting frameworks such as the Global Reporting Initiative and the Task Force on Climate-related Financial Disclosures, as well as by authoritative global frameworks such as the Global Governance Principles of the International Corporate Governance Network and the G20 OECD principles of Corporate Governance. Sustainability reporting standards should specify the information that undertakings should disclose on governance factors. Such information should cover the role of an undertaking's administrative, management and supervisory bodies with regard to sustainability matters, and their access to expertise and skills to fulfil this role through their own expertise or through access to the necessary expertise, and information on an undertaking's internal control and risk management systems in relation to the sustainability reporting process. Users also need information about undertakings' corporate culture and approach to business ethics, which are recognised elements of authoritative frameworks on corporate governance such as the Global Governance Principles of the International Corporate Governance Network, including information about anti-corruption and anti-bribery, and about the undertaking's political engagements, including lobbying activities. Information about the management of the undertaking and the quality of relationships with customers, suppliers and communities affected by the activities of the undertaking helps users to understand an undertaking's risks

as well as its impacts on sustainability matters. Information about relationships with suppliers, includes payment practices relating to the date or period for payment, the rate of interest for late payment or the compensation for recovery costs referred to in Directive 2011/7/EU of the European Parliament and of the Council³⁵ on late payment in commercial transactions. Every year, thousands of businesses, especially SMEs, suffer administrative and financial burdens because they are paid late, or not at all. Ultimately, late payments lead to insolvency and bankruptcy, with destructive effects on entire value chains. Increasing information about payment practices should empower other undertakings to identify prompt and reliable payers, detect unfair payment practices, access information about the businesses they trade with, and negotiate fairer payment terms.

- (45) The reporting standards should promote a more integrated view of all the information published by undertakings in the management report to provide users of that information with a better understanding of the development, performance, position and impact of the undertaking. Those standards should distinguish as necessary between information that undertakings should disclose when reporting at individual level and the information that undertakings should disclose when reporting at consolidated level. Those standards should also contain guidance for undertakings on the process carried out to identify the sustainability information that should be included in the management report, since an undertaking should only be required to disclose the information relevant to understand its impacts on sustainability matters, and the information relevant to understand how sustainability matters affect its development, performance and position.
- (46) Undertakings in the same sector are often exposed to similar sustainability-related risks, and they often have similar impacts on society and the environment. Comparisons between undertakings in the same sector are especially valuable to investors and other users of sustainability information. Sustainability reporting standards adopted by the Commission should therefore specify both information that undertakings in all sectors should disclose and information that undertakings should disclose depending on their sector of activity. Standards should also take account of the difficulties that undertakings may encounter in gathering information from actors throughout their value chain, especially from SME suppliers and from suppliers in emerging markets and economies.

³⁵ Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (OJ L 48, 23.2.2011, p. 1).

- (47) To meet the information needs from users in a timely manner, and in particular given the urgency to meet the information needs of financial market participants subject to the requirements laid down in the delegated acts adopted pursuant to Article 4, paragraphs 6 and 7 of Regulation (EU) 2019/2088, the Commission should adopt a first set of reporting standards by 31 October 2022. That set of reporting standards should specify the information that undertakings should disclose with regard to all reporting areas and sustainability matters, and that financial market participants need to comply with the disclosure obligations laid down in Regulation (EU) 2019/2088. The Commission should adopt a second set of reporting standards at the latest by 31 October 2023, specifying complementary information that undertakings should disclose about sustainability matters and reporting areas where necessary, and information that is specific to the sector in which an undertaking operates. The Commission should review the standards, including the standards for SMEs, every 3 years to take account of relevant developments, including the development of international standards.

(48) Directive 2013/34/EU does not require that the management report are provided in a digital format, which hinders the findability and usability of the reported information. Users of sustainability information increasingly expect such information to be findable and machine-readable in digital formats. Digitalisation creates opportunities to exploit information more efficiently and holds the potential for significant cost savings for both users and undertakings. Undertakings should therefore be required to prepare their management report in the format referred to in Article 3 of Commission Delegated Regulation (EU) 2019/815,³⁶ XHTML format, and to mark-up sustainability information, including the disclosures required by Article 8 of Regulation (EU) 2020/852, in accordance with the format referred to in that Delegated Regulation once this is determined. A digital taxonomy to the Union sustainability reporting standards will be necessary to allow for the reported information to be tagged in accordance with those standards. These requirements should feed into the work on digitalisation announced by the Commission in its Communication *A European strategy for data*³⁷ and in the *Digital Finance Strategy for the EU*.³⁸ These requirements also complement the creation of a European single access point for public corporate information as envisaged in the capital markets union action plan, which also considers the need for structured data.

³⁶ Commission Delegated Regulation (EU) 2018/815 of 17 December 2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on the specification of a single electronic reporting format (OJ L 143, 29.5.2019, p. 1).

³⁷ <https://ec.europa.eu/digital-single-market/en/european-strategy-data>

³⁸ https://ec.europa.eu/info/publications/200924-digital-finance-proposals_en

- (49) To allow for the inclusion of the reported sustainability information in the European single access point, Member States should ensure that undertakings with no securities listed in regulated markets publish ~~the duly approved annual financial statements and their~~ management report, including sustainability reporting, in the electronic format prescribed in **Commission Delegated Regulation (EU) 2019/815**, Directive 2013/34/EU, and ensure that ~~management reports of undertakings subject to sustainability reporting requirements are made available, without delay following their publication, to the relevant officially appointed mechanism referred to in Article 21(2) of Directive 2004/109/EC. Member States have the possibility to set up national systems to avoid double reporting by undertakings, for example, by connecting information from business registers and the officially appointed mechanisms.~~
- (50) Article 19a(4) of Directive 2013/34/EU enables Member States to exempt undertakings from including in the management report the non-financial statement required under Article 19a(1). Member States may do so where the undertaking concerned prepares a separate report that is published together with the management report in accordance with Article 30 of that Directive, or where that report is made publicly available on the undertaking's website within a reasonable period of time not exceeding 6 months, after the balance sheet date, and is referred to in the management report. The same possibility exists for the consolidated non-financial statement referred to in Article 29(a)(4) of Directive 2013/34/EU. Twenty Member States have used that option. The possibility to publish a separate report hinders, however, the availability of information that connects financial and information on sustainability matters. It also hinders the findability and accessibility of information for users, especially investors, who are interested in both financial and sustainability information. Possible different publication times for financial and sustainability information exacerbate this problem. Publication in a separate report can also give the impression, internally and externally, that sustainability information belongs to a category of less relevant information, which can impact negatively on the perceived reliability of the information. Undertakings should therefore report sustainability

information in a clearly identifiable dedicated section of the management report and Member States should no longer be allowed to exempt undertakings from the obligation to include in the management report information on sustainability matters. Such obligation also helps to clarify the role of national competent authorities in supervising sustainability reporting, as part of the management report, in accordance with Directive 2004/109/EC. In addition, undertakings required to report sustainability information should in no case be exempted from the obligation to publish the management report as it is important to ensure that sustainability information is publically available.

- (51) Article 20 of Directive 2013/34/EU requires undertakings with securities listed on regulated markets to include a corporate governance statement in their management report, which has to contain among other information a description of the diversity policy applied by the undertaking in relation to its administrative, management and supervisory bodies. Article 20 of Directive 2013/34/EU leaves flexibility to undertakings to decide what aspects of diversity they report on. It does not explicitly oblige undertakings to include information on any particular aspect of diversity. In order to progress towards a more gender-balanced participation in economic decision-making, it is necessary to ensure that undertakings with securities listed on regulated markets always report on their gender diversity policies and the implementation thereof. However, to avoid unnecessary administrative burden, those undertakings should have the possibility to report some of the information required by Article 20 of Directive 2013/34/EU alongside other sustainability-related information. If they decide to do so, the corporate governance statement needs to include a reference to the undertaking's sustainability reporting, and the information compliant with Article 20 of Directive 2013/34/EU should remain subject to the assurance requirements of the corporate governance statement.
- (52) Article 33 of Directive 2013/34/EU requires Member States to ensure that the members of the administrative, management and supervisory bodies of an undertaking have collective responsibility for ensuring that the (consolidated) annual financial statements, the (consolidated) management report and the (consolidated) corporate governance statement are drawn up and published in accordance with the requirements of that Directive. That collective responsibility should be extended to the digitalisation requirements laid down in Delegated Regulation (EU) 2019/815, to the requirement to comply with Union sustainability reporting standards and to the requirement to mark up sustainability reporting.

[...] ³⁹

- (70) Article 24 of Directive 2004/109/EC assigns to national supervisors the task of enforcing compliance with corporate reporting requirements by undertakings with securities listed on regulated markets. Article 4 of that Directive specifies the content of the annual financial reports, but lacks an explicit reference to Articles 19a and 29a of Directive 2013/34/EU, which require the preparation of a (consolidated) non-financial statement. This implies that national competent authorities of some Member States have no legal mandate to supervise those non-financial statements, especially where those statements are published in a separate report, outside of the annual financial report, which Member States may currently allow. It is therefore necessary to insert into Article 4(5) of Directive 2004/109/EC a reference to sustainability reporting. It is also necessary to require that the persons responsible within the issuer confirm in the annual financial report that, to the best of their knowledge, the management report is prepared in accordance with the sustainability reporting standards. In addition, given the novel character of those reporting requirements, the European Securities and Markets Authority should issue guidelines for national competent authorities to promote convergent supervision of sustainability reporting by issuers subject to Directive 2004/109/EC. These guidelines should only apply to the supervision of undertakings with securities listed on regulated markets.
- (71) Member States are invited to assess the impact of their transposition act on SMEs in order to ensure that they are not disproportionately affected, giving specific attention to micro-enterprises and to the administrative burden, and to publish the results of such assessments. Member States should consider introducing measures to support SMEs in applying the voluntary simplified reporting standards.
- (72) Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014 should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

³⁹ Recitals 53 to 68 : to be updated and added after the Working Party on February 9th 2022

Article 1

Amendments to Directive 2013/34/EU

Directive 2013/34/EU is amended as follows:

(1) in Article 1, the following paragraphs 3 and 3a are added:

‘3. The coordination measures prescribed by Articles 19a, 29d, 29a, 30 and 33, Article 34(1), second subparagraph, point (aa), paragraphs 2 and 3 of Article 34, and Article 51 of this Directive shall also apply to the laws, regulations and administrative provisions of the Member States relating to the following undertakings regardless of their legal form, provided they are large undertakings or small and medium sized undertakings which are undertakings referred to in Article 2, point (1), point (a) of this Directive:

(a) insurance undertakings within the meaning of Article 2(1) of Council Directive 91/674/EEC⁴⁰;

⁴⁰ Council Directive 91/674/EEC of 19 December 1991 on the annual accounts of insurance undertakings (OJ L 374, 31.12.1991, p. 7).

- (b) credit institutions as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013 of the European Parliament and of the Council⁴¹.

Member States may choose not to apply the coordination measures referred to in the first subparagraph to the undertakings listed in Article 2(5), points (2) to (23), of Directive 2013/36/EU of the European Parliament and of the Council⁴².

- 3a. The coordination measures prescribed by Articles 19a, 29d and 29a, shall not apply to financial products referred to in Article 2, point 12, points (b) and (f) of Regulation (EU) 2019/2088 of the European Parliament and of the Council, provided the financial product is not self-managed.’

⁴¹ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

⁴² Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

(2) Article 2 is amended as follows:

a) point (5) is replaced by the following:

‘(5) ‘net turnover’ means the amounts derived from the sale of products and the provision of services after deducting sales rebates and value added tax and other taxes directly linked to turnover for credit institutions referred to in point (b) of Article 1(3) of this Directive ‘net turnover’ shall be defined according to point (c) of Article 43(2) of Directive 1986/635 of the Council; for insurance undertakings referred to in point (a) of Article 1(3) of this Directive, ‘net turnover’ shall be defined according to ~~point 2 of~~ Article 35 of Directive 1991/674 of the Council’;

b) the following points (17) to (20) are added:

‘(17) ‘sustainability matters’ means environmental, social and human rights, and governance factors, including sustainability factors as defined in Article 2, point (24) of Regulation (EU) 2019/2088 of the European Parliament and of the Council⁴³;

(18) ‘sustainability reporting’ means reporting information related to sustainability matters in accordance with Articles 19a, 29a and 29d of this Directive;

(19) ‘key intangible resources’ means resources without physical substance on which the business model of the undertaking fundamentally depends and that are a source of creation of the value of the undertaking’;

(20) ‘independent assurance services provider’ means a conformity assessment body accredited in accordance with Regulation (EC) No 765/2008 of the European

⁴³ Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability- related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

Parliament and of the Council^{44*5} for the specific conformity assessment activity referred to in Article 34(1), second subparagraph, point (aa) of this Directive.’

(2a) In Article 19, the following subparagraph is inserted~~added to paragraph 1~~:

‘Large undertakings referred to in Article 3 (point (4) and small and medium-sized undertakings as defined in Article 3(2) and 3(3) which are undertakings as referred to in Article 2, point (1), point (a) shall report information on the key intangible resources on which the business model of the undertaking fundamentally depends, and explain this dependency and how they are a source of value creation for the undertaking’.

(3) Article 19a is replaced by the following:

‘Article 19a

Sustainability reporting

1. Large undertakings referred to in Article 3 point (4) and small and medium-sized undertakings as defined in Article 3(2) and 3(3) which are undertakings as referred to in Article 2, point (1), point (a) **and which are not micro-undertakings as defined in Article 3 (1)**, shall include in the management report information necessary to understand the undertaking’s impacts on sustainability matters, and information necessary to understand how sustainability matters affect the undertaking’s development, performance and position.

This information shall be clearly identifiable within the management report, through a dedicated section of the management report.

2. The information referred to in paragraph 1 shall contain:
 - (a) a brief description of the undertaking's business model and strategy, including:
 - (i) the resilience of the undertaking's business model and strategy to risks related to sustainability matters;

⁴⁴ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).’;

- (ii) the opportunities for the undertaking related to sustainability matters;
 - (iii) the plans of the undertaking to ensure that its business model and strategy are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement;
 - (iv) how the undertaking's business model and strategy take account of the interests of the undertaking's stakeholders and of the impacts of the undertaking on sustainability matters;
 - (v) how the undertaking's strategy has been implemented with regard to sustainability matters;
- (b) a description of the targets related to sustainability matters set by the undertaking and of the progress of the undertaking towards achieving those targets;
- (c) a description of the role of the administrative, management and supervisory bodies with regard to sustainability matters;
- (d) a description of the undertaking's policies in relation to sustainability matters;
- (e) a description of:
- (i) the due diligence process implemented by the undertaking with regard to sustainability matters;

- (ii) the principal actual or potential adverse impacts connected with the undertaking's value chain, including its own operations, its products and services, its business relationships and its supply chain;
 - (iii) any actions taken by the undertaking, and the result of such actions, to prevent, mitigate or remediate actual or potential adverse impacts;
- (f) a description of the principal risks to the undertaking related to sustainability matters, including the undertaking's principal dependencies on such matters, and how the undertaking manages those risks;
- (g) indicators relevant to the disclosures referred to in points (a) to (f).

Undertakings shall report the process carried out to identify the information that they have included in the management report in accordance with paragraph 1 and in this process they shall take account of short, medium and long-term horizons.

3. Where applicable, the information referred to in paragraphs 1 and 2 shall contain information about the undertaking's value chain, including the undertaking's own operations, products and services, its business relationships and its supply chain.

Where applicable, the information referred to in paragraphs 1 and 2 shall also contain references to, and additional explanations of, other information included in the management report in accordance with Article 19 and amounts reported in the annual financial statements.

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 position of the undertaking, provided that such omission does not prevent a fair and balanced understanding of the undertaking's development, performance, position and impact of its activity.

4. Undertakings shall report the information referred to in paragraphs 1 to 3 in accordance with the sustainability reporting standards referred to in Article 29b.
5. By way of derogation from Article 19a, paragraphs 2 to 4, **and without prejudice to paragraphs 7 and 7a,** small and medium-sized undertakings referred to in paragraph 1, ~~and~~ small and non-complex institutions as defined in Article 4(1), point (145) of Regulation (EU) No 575/2013, **and captive insurance undertakings as defined in Article 13 (2) of Directive 2009/138/EC and captive reinsurance undertakings as defined in Article 13 (5) of Directive 2009/138/EC** may limit their sustainability reporting to the following information:
 - (a) A brief description of the undertaking's business model and strategy;
 - (b) A description of the undertaking's policies in relation to sustainability matters;
 - (c) The principal actual or potential adverse impacts of the undertaking with regard to sustainability matters, and any actions taken to prevent, mitigate or remediate such actual or potential adverse impacts;
 - (d) The principal risks to the undertaking related to sustainability matters and how the undertaking manages those risks;
 - (e) Key indicators necessary to the disclosures referred to in points (a) to (d).

Small and medium-sized undertakings, ~~and~~ small and non-complex institutions **and captive insurance and reinsurance undertakings** that use this derogation shall report in accordance with the sustainability reporting standards for small and medium-sized undertakings referred to in Article 29c.

6. Undertakings that comply with the requirements set out in paragraphs 1 to 4 and undertakings making use of the derogation in paragraph 5 shall be deemed to have complied with the requirement set out in the third subparagraph of Article 19(1).
7. An undertaking ('the exempted subsidiary undertaking') which is a subsidiary undertaking shall be exempted from the obligations set out in paragraphs 1 to 4 if that undertaking and its subsidiary undertakings are included in the consolidated management report of a parent undertaking, drawn up in accordance with Articles 29 and 29a. An undertaking that is a subsidiary undertaking from a parent undertaking that is established in a third country shall also be exempted from the obligations set out in paragraphs 1 to 4 where that undertaking and its subsidiary undertakings are included in the consolidated management report of that parent undertaking and where the consolidated sustainability reporting is drawn up in a manner equivalent to sustainability reporting standards adopted pursuant to Articles 29b of this Directive, determined in accordance with the relevant measures adopted pursuant to Article 23(4), first subparagraph, point (i), and Article 23(4), fourth subparagraph of Directive 2004/109/EC of the European Parliament and of the Council⁴⁵.

The exemption in subparagraph 1 is subject to the following conditions:

- (i)** the management report of the exempted subsidiary undertaking contains all of the following information:
 - (a) the name and registered office of the parent undertaking that reports information at group level in accordance with Articles 29 and 29a of this Directive, or in a manner equivalent to sustainability reporting standards adopted pursuant to Article 29b of this Directive, determined in accordance with the measures adopted pursuant to Article 23(4), first subparagraph, point (i), and Article 23(4), fourth subparagraph of Directive 2004/109/EC;
 - (b) the web links to the consolidated management report of the parent undertaking referred to in the first subparagraph and to the opinion referred

⁴⁵ Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (*OJ L 390, 31.12.2004, p. 38*).';

to in Article 34(1), second subparagraph, point (aa) of this Directive or the opinion referred to in point (ii) of this subparagraph;

(c) the fact that the undertaking is exempted from the obligations set out in paragraphs 1 to 4 of this Article.

(ii) ~~When the parent undertaking referred to in the first subparagraph is established in a third country, its consolidated management report and the opinion referred to in Article 34(1) second subparagraph, point (aa) of this Directive~~ **based on a limited assurance engagement given by one or more person(s) or firm(s) authorised to give an opinion on the assurance of sustainability reporting under the national law governing the undertaking which drew up that consolidated management report,** shall be published in accordance with Article 30, in the manner prescribed by the law of the Member State by which the exempted subsidiary undertaking is governed.

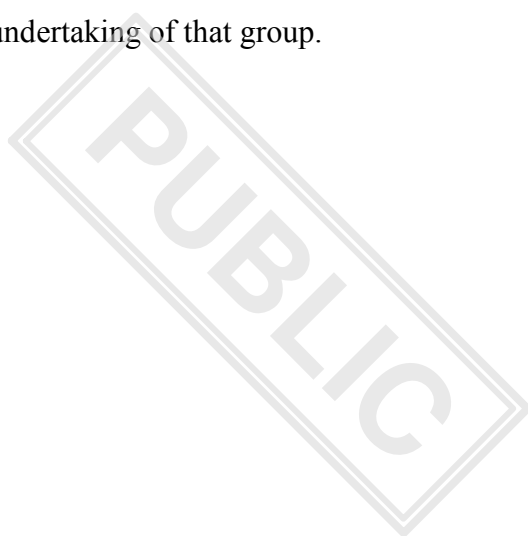
The Member State by which the exempted subsidiary undertaking is governed, may require that the consolidated management report of the parent undertaking ~~established in a third country as referred to in the first subparagraph of this paragraph~~ is published in a language that it accepts, and that any necessary translation into those languages is certified.

Undertakings which are exempted from preparing a management report according to Article 37 of this Directive, need not to provide the information of points (a), (b) and (c) of point (i) of the second subparagraph, provided they publish the consolidated management report referred to in the first subparagraph of this paragraph in accordance with Article 37 of this Directive.

For the purposes of the first subparagraph, and where Article 10 of Regulation (EU) No 575/2013 applies, credit institutions referred to in Article 1, point (3), point (b) of this Directive that are permanently affiliated to a central body which supervises them under the conditions laid down in that same article shall be treated as subsidiaries of the central body.

For the purposes of the first subparagraph, insurance undertakings referred to in Article 1(3), point (a) of this Directive that are part of a group on the basis of a relationship referred to in Article 212(1)(c)(ii) of Directive 2009/138/EC which is subject to group

supervision in accordance with Article 213(2), points (a), (b) and (c) **of that Directive** shall be treated as subsidiaries of the parent undertaking of that group.



- 7a The exemption of paragraph 7 shall also apply to public interest entities subject to the requirements of this Article.

[moved under chapter 6a as 29b, 29c and under chapter 6b as 29d]

- (5) Article 20(1) is amended as follows:

- (a) point (g) is replaced by the following:

‘(g) a description of the diversity policy applied in relation to the undertaking’s administrative, management and supervisory bodies with regard to gender and other aspects, such as, age, or educational and professional backgrounds, the objectives of that diversity policy, how it has been implemented and the results in the reporting period. If no such policy is applied, the statement shall contain an explanation as to why this is the case.’;

- (b) the following subparagraph is added:

‘Undertakings subject to Article 19a may comply with the obligation laid down in point (g) of the first subparagraph of this Article where they include the information required under those points as part of their sustainability reporting and a reference is included in the corporate governance statement.’;

- (6) Article 23 is amended as follows:

- (a) in paragraph 4, point (b) is replaced by the following:

‘(b) the consolidated financial statements referred to in point (a) and the consolidated management report of the larger body of undertakings are drawn up by the parent undertaking of that body, in accordance with the law of the Member State by which that parent undertaking is governed, in accordance with this Directive, with the exception of the requirements laid down in Article 29a, or in accordance with international accounting standards adopted in accordance with Regulation (EC) No 1606/2002’;

(b) in paragraph 8, point (b)(i) is replaced by the following:

‘(i) in accordance with this Directive, with the exception of the requirements laid down in Article 29a,’;

(c) in paragraph 8, (b)(iii) is replaced by the following:

‘(iii) in a manner equivalent to consolidated financial statements and consolidated management reports drawn up in accordance with this Directive, with the exception of the requirements laid down in Article 29a, or’;

(7) Article 29a is replaced by the following:

‘Article 29a

Consolidated sustainability reporting

1. Parent undertakings of a large group as referred to in Article 3, point (7) shall include in the consolidated management report information necessary to understand the group's impacts on sustainability matters, and information necessary to understand how sustainability matters affect the group's development, performance and position.

This information shall be clearly identifiable within the consolidated management report, through a dedicated section of the management report.

2. The information referred to in paragraph 1 shall contain:

(a) a brief description of the group's business model and strategy, including:

(i) the resilience of the group's business model and strategy to risks related to sustainability matters;

(ii) the opportunities for the group related to sustainability matters;

- (iii) the plans of the group to ensure that the group's business model and strategy are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement;
 - (iv) how the group's business model and strategy take account of the interests of the group's stakeholders and of the impacts of the group on sustainability matters;
 - (v) how the group's strategy has been implemented with regard to sustainability matters;
- (b) a description of the targets related to sustainability matters set by the group and of the progress of the group towards achieving those targets;
- (c) a description of the role of the administrative, management and supervisory bodies with regard to sustainability matters;
- (d) a description of the group's policies in relation to sustainability matters;
- (e) a description of:
 - (i) the due diligence process implemented by the group with regard to sustainability matters;
 - (ii) the principal actual or potential adverse impacts connected with the group's value chain, including its own operations, its products and services, its business relationships and its supply chain;
 - (iii) any actions taken by the group, and the result of such actions, to prevent, mitigate or remediate actual or potential adverse impacts;
- (f) a description of the principal risks to the group related to sustainability matters, including the group's principal dependencies on such matters, and how the group manages those risks;

(g) indicators relevant to the disclosures referred to in points (a) to (f).

Parent undertakings shall report the process carried out to identify the information that they have included in the consolidated management report in accordance with paragraph 1 and in this process they shall take account of short, medium and long-term horizons.

3. Where applicable, the information referred to in paragraphs 1 and 2 shall include information about the group's value chain, including its own operations, its products and services, its business relationships and its supply chain,

Where applicable, the information referred to in paragraphs 1 and 2 shall also, include references to, and additional explanations of, other information included in the consolidated management report in accordance with Article 29 of this Directive and amounts reported in the consolidated financial statements.

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 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.

4. Parent undertakings shall report the information referred to in paragraphs 1 to 3 in accordance with the sustainability reporting standards referred to in Article 29b.
6. A parent undertaking that complies with the requirements set out in paragraphs 1 to 4 shall be deemed to have complied with the requirements set out in the third subparagraph of Article 19(1) and Article 19a.

7. A parent undertaking (“the exempted parent undertaking”) which is also a subsidiary undertaking shall be exempted from the obligations set out in paragraphs 1 to 4 if that exempted parent undertaking and its subsidiaries are included in the consolidated management report of another undertaking, drawn up in accordance with Article 29 and this Article. A parent undertaking that is a subsidiary undertaking ~~of~~from a parent undertaking that is established in a third country shall also be exempted from the obligations set out in paragraphs 1 to 4 where that undertaking and its subsidiary undertakings are included in the consolidated management report of that parent undertaking and where the consolidated sustainability reporting is drawn up in a manner equivalent to sustainability reporting standards adopted pursuant to Articles 29b, determined in accordance with the relevant measures adopted pursuant to Article 23(4), first subparagraph, point (i), and Article 23(4), fourth subparagraph of Directive 2004/109/EC.

The exemption in subparagraph 1 is subject to the following conditions:

- (i)** The management report of the exempted parent undertaking shall contain all of the following information:
 - (a) the name and registered office of the parent undertaking that reports information at group level in accordance with Article 29 and this Article, or in a manner equivalent to sustainability reporting standards adopted pursuant to Article 29b of this Directive, determined in accordance with the measures adopted pursuant to Article 23(4), first subparagraph, point (i) and Article 23(4), fourth subparagraph of Directive 2004/109/EC;
 - (b) the web links to the consolidated management report of the parent undertaking referred to in the first subparagraph and to the opinion referred to in Article 34(1), second subparagraph, point (aa) of this Directive or the opinion referred to in point (ii) of this subparagraph ;
 - (c) the fact that the parent undertaking is exempted from the obligations set out in paragraphs 1 to 4 of this Article.

~~When the consolidated management report referred to in the second subparagraph is not drawn up in a language accepted by the Member State by which the exempted parent undertaking is governed, this Member State may require that the referred consolidated management report and the opinion referred to in Article 34(1), second subparagraph, point (aa), are published in a language that it accepts, and that any necessary translation into those languages is certified.~~

(ii) wWhen the parent undertaking referred to in the first subparagraph is established in a third country, its consolidated management report and the opinion **based on a limited assurance engagement given by one or more person(s) or firm(s) authorised to give an opinion on the assurance of sustainability reporting under the national law governing the undertaking which drew up that consolidated management report,** referred to in Article 34(1) second subparagraph, point (aa) of this Directive shall be published in accordance with Article 30, in the manner prescribed by the law of the Member State by which the exempted parent undertaking is governed.

The Member State by which the exempted parent undertaking is governed, may require that the consolidated management report of the parent undertaking ~~established in a third country as referred to in the first subparagraph of this paragraph~~ is published in a language that it accepts, and that any necessary translation into those languages is certified.

Parent undertakings which are exempted from preparing a management report according to Article 37 of this Directive, need not ~~to~~ provide the information of points (a), (b) and (c) of point (i) of the second subparagraph, provided they publish the consolidated management report referred to in the first subparagraph of this paragraph in accordance with Article 37 of this Directive.

For the purposes of the first subparagraph, and where Article 10 of Regulation (EU) No 575/2013 applies, credit institutions referred to in Article 1, point (3), point (b) of this Directive that are permanently affiliated to a central body which supervises them under the conditions laid down in that same article shall be treated as subsidiaries of the central body.

For the purposes of the first subparagraph, insurance undertakings referred to in Article 1(3), point (a) of this Directive that are part of a group on the basis of a relationship referred to in Article 212(1)(c)(ii) of Directive 2009/138/EC which is subject to group supervision in accordance with Article 213(2), points (a), (b) and (c) **of that Directive** shall be treated as subsidiaries of the parent undertaking of that group.

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

‘Article 29b

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:

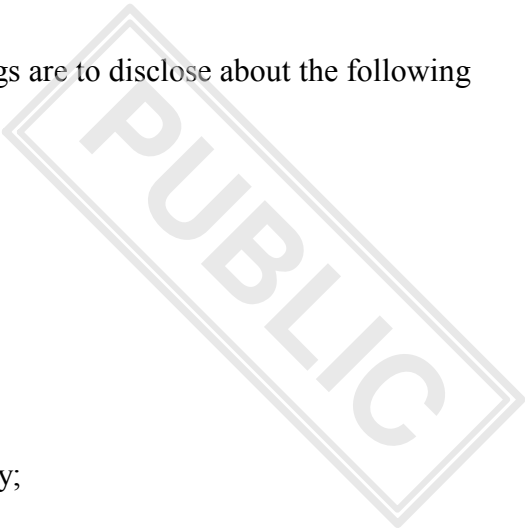
- (a) by 31 October 2022, the Commission shall adopt delegated acts specifying the information that undertakings are to report in accordance with paragraphs 1 and 2 of Article 19a, and paragraphs 1 and 2 of Article 29a where appropriate, and at least specifying information corresponding to the needs 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 Commission shall, at least every three years after its date of application, review any delegated act adopted pursuant to this Article, taking into consideration the technical advice of the European Financial Reporting Advisory Group (EFRAG), and where necessary shall amend such delegated act to take into account relevant developments, including developments with regard to international standards.

The Commission shall, at least once a year, consult jointly the Member State Expert Group on Sustainable Finance referred to in Article 24 of Regulation (EU) 2020/852 and the Accounting Regulatory Committee referred to in Article 6 of Regulation (EU) 1606/2002 on EFRAG's work programme as regards the development of sustainability reporting standards.

2. The sustainability reporting standards referred to in paragraph 1 shall require that the information to be reported is understandable, relevant, verifiable, comparable, and is represented in a faithful manner.

The sustainability reporting standards shall, taking into account the subject matter of a particular standard:

- 
- (a) specify the information that undertakings are to disclose about the following environmental factors:
 - (i) climate change mitigation;
 - (ii) climate change adaptation;
 - (iii) water and marine resources;
 - (iv) resource use and circular economy;
 - (v) pollution;
 - (vi) biodiversity and ecosystems;
 - (b) specify the information that undertakings are to disclose about the following social and human rights factors:
 - (i) equal opportunities for all, including gender equality and equal pay for equal work or work of equal value, training and skills development, and employment and inclusion of people with disabilities;
 - (ii) working conditions, including secure and adaptable employment, wages, social dialogue, collective bargaining and the involvement of workers, work-life balance, and a healthy, safe and well-adapted work environment;
 - (iii) respect for the human rights, fundamental freedoms, democratic principles and standards established in the International Bill of Human Rights and other core UN human rights conventions, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work and the ILO fundamental conventions and the Charter of Fundamental Rights of the European Union.
 - (c) specify the information that undertakings are to disclose about the following governance factors:

- (i) the role of the undertaking's administrative, management and supervisory bodies with regard to sustainability matters, and their expertise and skills to fulfil this role or access to such expertise and skills;
- (i)a the main features of the undertaking's internal control and risk management systems, in relation to the sustainability reporting process;
- (ii) business ethics and corporate culture, including anti-corruption and anti-bribery;
- (iii) political engagements of the undertaking, including its lobbying activities;
- (iv) the management and quality of relationships with customers, suppliers and communities affected by the activities of the undertaking, including payment practices;

[moved to (i)a]

- 2a. The sustainability reporting standards shall specify the forward-looking and retrospective information, and qualitative and quantitative information, as appropriate, to be reported by undertakings.
- 2b. Standards shall also take account of the difficulties that undertakings may encounter in gathering information from actors throughout their value chain, especially from **those which are not obliged to publish sustainability information pursuant to Article 19a or 29a of Directive 2013/34/EU** ~~SME-suppliers,~~ and from suppliers in emerging markets and economies. They **shall specify disclosures on value chains that are** ~~shall~~ be proportionate and relevant to the scale and complexity of the activities, and to the capacities and characteristics of **the undertakings in value chain, especially those of undertakings that are not subject to the sustainability reporting obligations of Articles 19a or 29a of this Directive** ~~small and medium-sized undertakings.~~
3. When adopting delegated acts pursuant to paragraph 1, the Commission shall to the greatest extent possible take account of:
 - (a) the work of global standard-setting initiatives for sustainability reporting, and existing standards and frameworks for natural capital accounting and for

greenhouse gas accounting, responsible business conduct, corporate social responsibility, and sustainable development;

- (b) the information that financial market participants need to comply with their disclosure obligations laid down in Regulation (EU) 2019/2088 and the delegated acts adopted pursuant to that Regulation;
- (c) the delegated acts adopted pursuant to Regulation (EU) 2020/852⁴⁶;
- (d) the disclosure requirements applicable to benchmarks administrators in the benchmark statement and in the benchmark methodology and the minimum standards for the construction of EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks in accordance with Commission Delegated Regulations (EU) 2020/1816⁴⁷, (EU) 2020/1817⁴⁸ and (EU) 2020/1818⁴⁹;
- (e) the disclosures specified in the implementing acts adopted pursuant to Article 434a of Regulation (EU) No 575/2013⁵⁰;
- (f) Commission Recommendation 2013/179/EU⁵¹;

⁴⁶ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

⁴⁷ Commission Delegated Regulation (EU) 2020/1816 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards the explanation in the benchmark statement of how environmental, social and governance factors are reflected in each benchmark provided and published (OJ L 406, 3.12.2020, p. 1).

⁴⁸ Commission Delegated Regulation (EU) 2020/1817 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards the minimum content of the explanation on how environmental, social and governance factors are reflected in the benchmark methodology (OJ L 406, 3.12.2020, p. 12).

⁴⁹ Commission Delegated Regulation (EU) 2020/1818 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks (OJ L 406, 3.12.2020, p. 17).

⁵⁰ Commission Implementing Regulation laying down implementing technical standards with regard to public disclosures by institutions of the information referred to in Titles II and III of Part Eight of Regulation (EU) No 575/2013 of the European Parliament and of the Council (C(2021)1595)

⁵¹ Commission Recommendation 2013/179/EU of 9 April 2013 on the use of common methods to measure and communicate the life cycle environmental performance of products and organisations (OJ L 124, 4.5.2013, p. 1).

- (g) Directive 2003/87/EC of the European Parliament and of the Council⁵²;
- (h) Regulation (EC) No 1221/2009 of the European Parliament and of the Council⁵³.

Article 29c

Sustainability reporting standards for SMEs

The Commission shall adopt delegated acts in accordance with Article 49 to provide for sustainability reporting standards proportionate and relevant to the scale and complexity of the activities, and to the capacities and characteristics of small and medium-sized undertakings. ~~The~~se sustainability reporting standards shall specify for **these** small and medium-sized undertakings referred to in Article 2, point (1)(a), the information that shall be reported in accordance with Article 19a(5).

Reporting standards for small and medium-sized undertakings shall take into account the criteria set out in Article 29b, paragraphs 2, 2a, 2b and 3. They shall also, to the extent possible, specify the structure in which that information shall be reported.

The Commission shall, at least every three years after its date of application, review any delegated act adopted pursuant to this Article, taking into consideration the technical advice of the European Financial Reporting Advisory Group (EFRAG), and where necessary, shall amend such delegated act to take into account relevant developments, including developments with regard to international standards.

⁵² Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

⁵³ Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (OJ L 342, 22.12.2009, p. 1).

The Commission shall adopt those delegated acts at the latest by 31 October 2023.’

(7)c A new chapter title is inserted

“Chapter 6b – Electronic format”

(7)d A new article is added

‘Article 29d

Single electronic reporting format

1. Undertakings subject to Article 19a shall prepare their management report in the electronic reporting format referred to in Article 3 of Commission Delegated Regulation (EU) 2019/815⁵⁴ and shall mark-up their sustainability reporting, including the disclosures laid down in Article 8 of Regulation (EU) 2020/852, in accordance with the format referred to in that Delegated Regulation.

⁵⁴ Commission Delegated Regulation (EU) 2019/815 of 17 December 2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on the specification of a single electronic reporting format (OJ L 143, 29.5.2019, p. 1).;’

2. Parent undertakings subject to Article 29a shall prepare their consolidated management report in the single electronic reporting format referred to in Article 3 of Delegated Regulation (EU) 2019/815 and shall mark-up sustainability reporting, including the disclosures laid down in Article 8 of Regulation (EU) 2020/852, in accordance with the format referred to in that Delegated Regulation.

(8) Article 30 is amended as follows:

- (a) paragraph 1 is replaced by the following:

‘1. Member States shall ensure that undertakings publish within a reasonable period of time, which shall not exceed 12 months after the balance sheet date, the duly approved annual financial statements and the management report in the format prescribed by Article 29d of this Directive where applicable, together with the opinions and statement submitted by the statutory auditor or audit firm referred to in Article 34 of this Directive, as laid down by the laws of each Member State in accordance with Title 1, Chapter III of Directive (EU) 2017/1132 of the European Parliament and of the Council.

Where an independent assurance services provider gives the opinion referred to in Article 34(1), second subparagraph, point (aa), this opinion shall be published together with the ~~reports~~ documents referred to in the first subparagraph.

Member States may, however, exempt undertakings from the obligation to publish the management report where a copy of all or part of any such report can be easily obtained upon request at a price not exceeding its administrative cost.

The exemption laid down in the third subparagraph shall not apply to undertakings subject to Articles 19a and 29a. ’;

(9) in Article 33, paragraph 1 is replaced by the following:

‘1. Member States shall ensure that the members of the administrative, management and supervisory bodies of an undertaking, acting within the competences assigned to them by national law, have collective responsibility for ensuring that the following documents are drawn up and published in accordance with the requirements of this Directive and,

where applicable, with the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002, with Delegated Regulation 2019/815, with the sustainability reporting standards referred to in Article 29b, or Article 29c where applicable, of this Directive, and with the requirements of Article 29d of this Directive:

- (a) the annual financial statements, the management report and the corporate governance statement when provided separately;
- (b) the consolidated financial statements, the consolidated management reports and the consolidated corporate governance statement when provided separately.;

[...]⁵⁵

Adjustments to article 5 (Transposition)

Article 5

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 3 of this Directive by [Publications Office - set the date = eighteen months after entry into force]. They shall immediately inform the Commission thereof.

Member States shall provide that the provisions **of Article 1** referred to in the first subparagraph shall apply:

- a) for financial years starting on or after 1 January 2024:
 - i) to large undertakings as defined in Article 3(4) of Directive 2013/34/EU which are public-interest entities as defined in Article 2, point (1) of that Directive exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year;
 - ii) to public-interest entities as defined in Article 2, point (1) of Directive 2013/34/EU which are parent undertakings of a large group as defined in Article 3(7) of Directive 2013/34/EU exceeding on its balance sheet dates, on a

consolidated basis, the criterion of the average number of 500 employees during the financial year;

- b) for financial years starting on or after 1 January 2025:
 - i) to large undertakings as defined in Article 3(4) of Directive 2013/34/EU other than those referred to in point (a), point (i);
 - ii) to parent undertakings of a large group as defined in Article 3(7) of Directive 2013/34/EU other than those referred to in point (a), point (ii);
- c) for financial years starting on or after 1 January 2026:-
 - (i) to small and medium-sized undertakings as defined in Article 3(2) and 3(3) of Directive 2013/34/EU which are undertakings referred to in Article 2, point (1), point (a) of that Directive and which are not micro-undertakings as defined in Article 3 (1) of that Directive;**
 - (ii) to small and non-complex institutions provided they are large undertakings referred to in Article 3 point (4) of Directive 2013/34/EU or that they are small and medium sized undertakings as defined in Article 3(2) and 3(3) which are undertakings referred to in Article 2, point (1), point (a) of that Directive and which are not micro-undertakings as defined in Article 3 (1) of that Directive;**
 - (iii) to captive insurance undertakings and captive reinsurance undertakings provided that they are large undertakings referred to in Article 3 point (4) of Directive 2013/34/EU or that they are small and medium sized undertakings as defined in Article 3(2) and 3(3) which are undertakings referred to in Article 2, point (1), point (a) of that Directive and which are not micro-undertakings as defined in Article 3 (1) of that Directive.**

Member States shall provide that the provisions of Articles 2 and 3 referred to in the first subparagraph shall apply:

- a) for financial years starting on or after 1 January 2024
 - i) to issuers as defined in point (d) of Article 2(1) of Directive 2004/109/EC which are large undertakings as defined in Article 3(4) of Directive 2013/34/EU exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year;
 - ii) to issuers as defined in point (d) of Article 2(1) of Directive 2004/109/EC which are parent undertakings of a large group as defined in ~~point (d) of Article 2(1) of Directive 2004/109/EC~~ **Article 3(7) of Directive 2013/34/EU exceeding on its balance sheet dates, on a consolidated basis, the criterion of the average number of 500 employees during the financial year;**
- b) for financial years starting on or after 1 January 2025
 - i) to issuers as defined in point (d) of Article 2(1) of Directive 2004/109/EC which are large undertakings as defined in Article 3(4) of Directive 2013/34/EU other than those referred to in point (a), point (i);
 - ii) to issuers as defined in point (d) of Article 2(1) of Directive 2004/109/EC which are parent undertakings of a large group as defined **in Article 3(7) of Directive 2013/34/EU** ~~in point (d) of Article 2(1) of Directive 2004/109/EC~~ other than those referred to in point (a), point (ii);
- c) for financial years starting on or after 1 January 2026:
 - (i)** to issuers as defined in point (d) of Article 2(1) of Directive 2004/109/EC which are small and medium-sized undertakings as defined in Article 3(2) and 3(3) of Directive 2013/34/EU **and which are not micro-undertakings as defined in Article 3 (1) of that Directive;-**
 - (ii)** to issuers defined as small and non-complex institutions provided they are large undertakings referred to in Article 3 point (4) of Directive 2013/34/EU or that they are small and medium sized undertakings as defined in Article 3(2) and 3(3) which are undertakings referred to in Article 2, point (1), point (a) of that Directive and which are not micro-undertakings as defined in Article 3 (1) of that Directive;
 - (iii)** to issuers defined as captive insurance undertakings or captive reinsurance undertakings provided that they are large undertakings referred to in Article

3 point (4) of Directive 2013/34/EU or that they are small and medium sized undertakings as defined in Article 3(2) and 3(3) which are undertakings referred to in Article 2, point (1), point (a) of that Directive and which are not micro-undertakings as defined in Article 3 (1) of that Directive.

Member States shall provide that the provisions of Article 3 referred to in the first subparagraph shall apply for financial years starting on or after 1 January 2024.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.



Conseil de l'Union européenne
Secrétariat général

Bruxelles, 07 février 2022

Dossiers interinstitutionnels:
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DOCUMENT DE SÉANCE

De:	Présidence
A:	Working Party on Company Law (Sustainability information)
N° doc. prec.:	5788/22
N° Cion doc.:	8132/21
Sujet:	Proposition de DIRECTIVE DU PARLEMENT EUROPÉEN ET DU CONSEIL modifiant les directives 2013/34/UE, 2004/109/CE et 2006/43/CE ainsi que le règlement (UE) n° 537/2014 en ce qui concerne la publication d'informations en matière de durabilité par les entreprises - Note de la Présidence en vue de la réunion du groupe "Droit des sociétés" du 9 février 2022

PRÉSIDENTIE FRANÇAISE DU CONSEIL DE L'UNION EUROPÉENNE

Note de la Présidence

Groupe Droit des sociétés du 9 Février 2022

Proposition de directive relative à la publication d'informations en matière de durabilité par les entreprises

Chers collègues,

Lors de notre groupe de travail du 9 février prochain, **nous nous concentrerons sur les amendements relatifs à l'assurance du reporting de durabilité** dans la proposition de directive CSRD. Pour faire suite aux discussions en groupe de travail ce 3 février et aux contributions écrites des Etats membres, des ajustements au texte sur l'audit seront présentés, le 7 février, pour être discutés le 9 février.

Ces ajustements porteront sur les points suivants :

- Article 1 (amendements à la directive 2013/34/UE) **paragraphes (9a) et (10)** sur l'audit de l'assurance du rapport de soutenabilité ;
- Article 2 (amendements à la directive 2004/109/CE) ;
- Article 3 (amendements à la directive 2006/403/CE) ;
- Article 4 (amendements au règlement 537/2014/UE) ;
- Considérants 53 à 68.

Nous n'aborderons pas les **autres aspects du texte**, qui seront soumis au Coreper avec les quelques **ajustements proposés en annexe à la présente note**. Ces ajustements font suite aux propositions de clarifications apportées par plusieurs Etats membres avant et pendant le groupe de travail du 3 février, mais ils ne changent pas la substance ni l'équilibre du texte.