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DOCUMENT DE SÉANCE

De:	Présidence
A:	Working Party on Company Law (Sustainability information)
N° doc. prec.:	14268/21
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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 13 janvier 2022

Les délégations trouveront ci-joint une note de la Présidence en vue de la réunion du groupe "Droit des sociétés" du 13 janvier 2022.

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Annexe

Ajustements au projet de compromis

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/EEC¹;
- (b) credit institutions as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013 of the European Parliament and of the Council².

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 Council³.

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 ~~all of the~~ following is met:

¹ Council Directive 91/674/EEC of 19 December 1991 on the annual accounts of insurance undertakings (OJ L 374, 31.12.1991, p. 7).

² 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).

³ 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).

- ~~a) — financial market participants as defined in Article 2, point 1 of Regulation (EU) 2019/2088 which apply point (a) of Article 4 (1) or Article 4(3) or (4) of Regulation (EU) 2019/2088;~~
- ~~i) — include in the disclosures referred to in Article 6(3) of that Regulation information on how a financial product considers principal adverse impacts on sustainability factors and a statement that information on principal adverse impacts on sustainability factors is available in the information to be disclosed pursuant to Article 11(2) of that regulation;~~
- ~~ii) — include in the information to be disclosed pursuant to Article 11(2) of that regulation a clear and reasoned explanation of the impacts of the financial product on sustainability factors;~~
- b) — the financial product is not self-managed.’

(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 Council⁴;~~ **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 66 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 Council⁵;

⁴ — 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).

⁵ 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).

- (18) ‘sustainability reporting’ means reporting information related to sustainability matters in accordance with Articles 19a, **29a, 29b and 29d** and ~~29a~~ of this Directive;
- (19) ‘key intangible resources’ means, for the purpose of sustainability reporting, resources without physical substance related to sustainability matters 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 Parliament and of the Council^{6*5} for the specific conformity assessment activity referred to in Article 34(1), second subparagraph, point (aa) of this Directive.’

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

‘Article 19a

Sustainability reporting

1. Large undertakings **referred to Article 3 point (4) and 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) ~~which for the purpose of this Article are small and medium-sized undertakings~~, 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 ~~in particular~~:
- (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;
- (ii) the opportunities for the undertaking related to sustainability matters;

⁶ 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).’;

- (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 also report information on ~~the key intangible resources on which the business model of the undertaking fundamentally depends,~~ **including on how their business model depends on them and** ~~and explain this dependency and~~ **on** how they are a source of value creation for the undertaking.

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. **An undertaking shall only disclose the information necessary to understand its impacts on sustainability matters, and the information necessary to understand how sustainability matters affect its development, performance and position.**

3. Where **applicable**appropriate, 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**appropriate, 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 1 to 4, small and medium sized undertakings referred to in Article 2, point (1), point (a) **paragraph 1**, may report in accordance with the sustainability reporting standards for small and medium sized undertakings referred to in Article 29c.

By way of derogation from Article 19a, paragraphs 1 to 4, small and non-complex institutions as defined in Article 4(1), point (145) of Regulation (EU) No 575/2013 may 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 derogation in paragraph 5** shall be deemed to have complied with the requirement set out in the third subparagraph of Article 19(1)-and Article 19a.

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 and 29e of this Directive, determined in accordance with the relevant ~~implementing~~ 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 Council⁷.

The management report of the exempted subsidiary 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 Articles 29 and 29a of this Directive, or in a manner equivalent to sustainability reporting standards adopted pursuant to Articles 29b and 29e of this Directive, determined in accordance with the ~~implementing~~ 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;
- (c) the fact that the 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 customary in the sphere of international finance or in a language accepted by the Member State by which the subsidiary undertaking is

⁷ 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*).';

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) of this Directive, are published in a language that it accepts, or in a language customary in the sphere of international finance, depending on the choice of the exempted subsidiary undertaking, and that any necessary translation into those languages is certified.

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 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 third subparagraph of this paragraph is published in an official language of the Member State or in a language customary in the sphere of international finance, at the choice of the exempted subsidiary, 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 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) 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 points (a), (c), (f) and (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:

Consolidated sustainability reporting

1. Parent undertakings of a large group referred to 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 ~~in particular~~:
 - (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 also report information on the key intangible resources ~~on which the business model of the group fundamentally depends~~, **including on how their business model depends on them and on** ~~and explain this dependency and how they~~ are a source of value creation for the group.

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.

An undertaking shall only disclose the information necessary to understand its impacts on sustainability matters, and the information necessary to understand how sustainability matters affect its development, performance and position.

Where **applicable**~~appropriate~~, 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**~~appropriate~~, 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 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 and 29e, determined in accordance with the relevant implementing measures adopted pursuant to Article 23(4), **first subparagraph**, point (i), and Article 23(4), fourth subparagraph of Directive 2004/109/EC.

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 Articles 29b and 29e of this Directive, determined in accordance with the implementing 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;

- (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 customary in the sphere of international finance or 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, or in a language customary in the sphere of international finance, depending on the choice of the exempted parent undertaking, and that any necessary translation into those languages is certified.

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 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 third subparagraph of this paragraph is published in an official language of the Member State or in a language customary in the sphere of international finance, at the choice of the exempted subsidiary, 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 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) 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.’

(7)a A new chapter title is inserted

“Chapter 6a – Sustainability **reporting** standards”

(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, ~~including information about~~:
 - (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, ~~including information about~~:
 - (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, ~~including information about~~:
- (i) the role of the undertaking's administrative, management and supervisory bodies with regard to sustainability matters, and their **expertise and skills** ~~capacity~~ 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 ~~information specified in the~~ sustainability reporting standards shall **specify the** ~~contain~~ forward-looking and retrospective information, and qualitative and quantitative information, as appropriate, **to be reported by 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) 2020/852⁸;
- (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) 2020/1816⁹, (EU) 2020/1817¹⁰ and (EU) 2020/1818¹¹;
- (e) the disclosures specified in the implementing acts adopted pursuant to Article 434a of Regulation (EU) No 575/2013¹²;
- (f) Commission Recommendation 2013/179/EU¹³;
- (g) Directive 2003/87/EC of the European Parliament and of the Council¹⁴;
- (h) Regulation (EC) No 1221/2009 of the European Parliament and of the Council¹⁵.

⁸ 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).

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 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)

¹³ 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).

¹⁴ 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).

¹⁵ 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).

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. Those sustainability reporting standards shall specify ~~which information referred to in Article 19a~~**for** small and medium-sized undertakings referred to in Article 2, point (1)(a) **the information to be** ~~shall reported~~ **regarding the following matters: -**

- (a) **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**
- (b) **The principal risks to the undertaking related to sustainability matters and how the undertaking manages those risks**
- (c) **Indicators relevant to the disclosures referred to in points (a) and (b)**

~~They~~**Reporting standards for small and medium sized undertakings** shall take into account the criteria set out in Article 29b, paragraphs 2, **2a** and 3. They shall also, where relevant, 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.

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 429d

Single electronic reporting format

[OPTION 1]

1. Undertakings subject to Article 19a shall prepare ~~their financial statements and their~~ management report in the electronic reporting format referred to in Article 3 of Commission Delegated Regulation (EU) 2019/815¹⁶ 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.
~~Member States may allow undertakings subject to Article 19a other than those referred to in Article 2, point (1), point (a) of this Directive to prepare their financial statements in accordance with a different electronic format than the one prescribed in Article 3 of Commission Delegated Regulation (EU) 2019/815.~~
2. Undertakings subject to Article 29a shall prepare ~~their consolidated financial statements and 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.
~~Member States may allow parent undertakings subject to Article 29a other than those referred to in Article 2, point (1), point (a) of this Directive to prepare their consolidated financial statements in accordance with a different electronic format than the one prescribed in Article 3 of Commission Delegated Regulation (EU) 2019/815’;~~

[OPTION 2]

1. Undertakings subject to Article 19a shall their financial statements and their management report in the electronic reporting format referred to in Article 3 of

¹⁶ 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).;’

Commission Delegated Regulation (EU) 2019/815¹⁷ 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.

Member States may allow **or require** undertakings subject to Article 19a other than those referred to in Article 2, point (1), point (a) of this Directive to prepare their financial statements in accordance with a different electronic format than the one prescribed in Article 3 of Commission Delegated Regulation (EU) 2019/815, **including a machine readable format.**

2. Undertakings subject to Article 29a shall prepare their consolidated financial statements and 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.

Member States may allow **or require** parent undertakings subject to Article 29a other than those referred to in Article 2, point (1), point (a) of this Directive to prepare their consolidated financial statements in accordance with a different electronic format than the one prescribed in Article 3 of Commission Delegated Regulation (EU) 2019/815, **including a machine readable format.’;**

(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 Council¹⁸.

¹⁷ 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).;

¹⁸ Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).

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.‘;

(b) the following paragraph 1a is inserted:

‘1a. Member States shall ensure that (consolidated) management reports drawn up by undertakings subject to Articles 19a and 29a other than those referred to in Article 2, point (1), point (a) are also made available to one of the relevant officially appointed mechanisms referred to in Article 21(2) of Directive 2004/109/EC of the Member State where the undertaking has its registered office, ~~at the latest~~ without delay following their publication.

(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.‘;

PRÉSIDENTIE FRANÇAISE DU CONSEIL DE L'UNION EUROPÉENNE

Note de la Présidence

Groupe Droit des sociétés du 13 Janvier 2022

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

Chers collègues,

Lors de notre première réunion du groupe de travail sous notre Présidence, « droit des sociétés » sur la proposition en objet, nous allons continuer les discussions sur le texte de compromis présenté par la Présidence slovène le 8 décembre (doc 14268/21) et vous présenter des propositions d'ajustement suite à vos commentaires.

Ce groupe de travail sera organisé en deux parties :

- (I) Continuation du tour de table sur ce texte de compromis avec un focus sur les aspects qui n'ont pas été vraiment abordés en décembre ;
- (II) Ajustements apportés au texte, sur les aspects discutés lors du Groupe de travail du 8 décembre, et qui ont fait l'objet de commentaires et suggestions écrites des Etats membres.

I – Continuation du tour de table

La présentation du compromis organisée le 8 décembre 2021 par la Présidence slovène s'est focalisée sur quatre aspects : le champ d'application ; les standards de reporting en matière de durabilité, y compris pour les PME ; le format de reporting électronique ; les sanctions.

Le 13 janvier, la Présidence poursuivra ce tour de table sur certains aspects du texte, tels que:

A. Traitement des filiales :

- Les Etats membres soutiennent-ils l'exemption telle qu'elle est prévue dans le compromis ?
- Les régimes d'équivalence : les Etats membres souhaitent-ils revoir le texte concernant les régimes d'équivalences pour les filiales établies dans les pays hors-UE ?
- Les exigences linguistiques liées au reporting des filiales : faut-il maintenir les deux possibilités prévues par le texte (soit un reporting dans la langue officielle de l'Etat membre dont relève l'entreprise exemptée, soit dans une langue usuelle de la sphère financière internationale), ou faut-il imposer un reporting dans la langue officielle ?

B. Aspects spécifiques de proportionnalité:

- Exceptions en cas de préjudice commercial ;
- Autres demandes de flexibilités.

C. Audit :

Examen des modifications apportées par le texte de compromis sur les dispositions de la Directive transparence, de la Directive Audit, et du Règlement Audit, pour ce qui concerne l'assurance des informations publiées en matière de durabilité.

II – Examen des ajustements proposés dans le texte de compromis

Faisant suite aux commentaires reçus jusqu'à présent, la Présidence soumettra aux Etats membres les ajustements en annexe, sur les aspects suivants :

A. Champ d'application et définitions

NB : Sur la question des PME, la Présidence demandera aux délégations si elles souhaitent exclure l'ensemble des PME du champ du reporting obligatoire ou si elles souhaitent plutôt encadrer davantage le contenu des obligations de reporting pour les PME qui sont soumises à ces obligations (*selon les propositions en annexe*).

B. Standards de reporting en matière de durabilité

C. Standards de reporting pour les PME

D. Localisation et format du reporting de durabilité

- Sur la question de la localisation, la Présidence interrogera les délégations sur leur volonté de renforcer le premier texte de compromis en ajoutant la précision que le reporting de durabilité doit être identifiable dans le rapport de gestion au travers d'une section séparée.
- Sur la question du format électronique, la Présidence soumet en annexe deux options d'ajustements possibles, entre lesquelles elle demandera aux Etats membres leur préférence.
 - ⇒ Option 1 : limiter l'obligation d'une digitalisation sous format ESEF au rapport de gestion, au sein duquel se trouve le reporting de durabilité. L'amendement proposé par la Présidence supprime l'obligation introduite par la proposition législative de la Commission de soumettre les sociétés soumises à la présente directive, y compris les grandes sociétés non-cotées, à l'obligation de digitalisation de leurs états financiers sous format ESEF.
 - ⇒ Option 2 : conserver l'obligation de digitalisation sous format ESEF à la fois du rapport de gestion et des états financiers des sociétés soumises à la CSRD, y compris les grandes sociétés non-cotées. Les amendements proposés par la Présidence visent à habilitier les Etats membres à autoriser mais aussi à requérir des sociétés non-cotées qu'elles publient leurs états financiers sous un format différent d'ESEF, y compris un format lisible par machine.