Council of the European Union
General Secretariat

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Interinstitutional files:
2025/0045 (COD)

Brussels, 03 June 2025

WK 7271/2025 INIT

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Antici Group (Simplification)
Subject:	Explanatory notes - CSRD and CS3D SIMPLIFICATION

Delegations will find attached the explanatory notes for CSRD and for CS3D Simplification, in preparation for the meeting of the Antici Group (Simplification) on 4 June 2025.

EXPLANATORY NOTE

CSRD SIMPLIFICATION – 3rd Presidency compromise

Antici Group on Simplification (AGS)

4 June 2025, Wednesday

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The purpose of this explanatory note is to provide delegations with additional information, clarifications and reasoning for the amendments proposed by the Presidency.

The explanatory note follows the order of the relevant recitals.

This document is for reference only.

ARTICLE	REASONING
New recital 2a Article 1(-1) (Article 3(4) of Directive 2006/43/EC) Article 1(1a) (Article 45(5) point a of Directive 2006/43/EC)	A new recital 2a clarifying the changes in Article 3(4) of the Directive 2006/43/EC has been added. While introducing amendments to Article 3(4) of the Directive 2006/43/EC in the second compromise proposal, the reference to Article 4 of that Directive was unintentionally omitted from the list of articles to be complied with. Similarly, point (d) of the current Article 3(4) of the Directive 2006/43/EC was also unintentionally omitted. Both have been now reinstated in the revised wording of Article 3(4) of the Directive 2006/43/EC. The change in Article 45(5) point (a) of the Directive 2006/43/EC was introduced, as a result of the changes in Article 3(4) of that Directive in order to ensure a level playing field for the third-country audit entities.
Recital 6 Recital 6a	In response to the concerns raised by some Member States, the Presidency has decided to make a clarification in Recital 6. Taking into account that the second subparagraphs of Articles 19b and 29aa introduce exceptions to Article 8 of the Regulation 2020/852, the recital clarifies that these subparagraphs do not need to be transposed in the national laws. It also states that information disclosed under Article 8 of the Regulation 2020/852 is indispensable in the case of large undertakings with an average of more than 1000 employees and with a particularly high turnover (i.e. more than 450 000 000 EU). Moreover, for the sake of more clarity, the Presidency has decided to split Recital 6 into an additional Recital 6a. It addresses the undertakings within the new scope of sustainability reporting whose turnover falls below the EUR 450 000 000 threshold. These undertakings should be given a more flexible regime, as proposed in Article 19b and 29aa of the Directive 2013/34/EU.

Recital 9 Article 2(2) point b (i) (Article 19a(3) of Directive 2013/34/EC) Article 2(4) point b (i) (Article 29a(3) of Directive 2013/34/EC) Article 2(8) (Article 29ca of Directive 2013/34/EU)	The Presidency has taken note of the concerns expressed by several Member States and the European Commission regarding the wording of the provisions on the value chain cap proposed in the second compromise proposal, particularly regarding its possible implication that providing information within the limits of the voluntary reporting standard by undertakings in the value chain may be mandatory. Taking these comments into account, with a view to ensure sufficient level of protection of the value chain undertakings and to make the value chain cap operational in practice, while ensuring the compliance with Articles 11 and 16 of the Charter of the Fundamental Rights of the European Union, the Presidency has revised the proposed changes to Articles 19a(3) and 29a(3) of the Directive 2013/34/EU. The introduced provisions consist of: • prohibiting a reporting undertaking to require – contractually or through other arrangements - from the value chain undertaking any information that exceeds the voluntary reporting standard and the information commonly shared in a given sector; • considering contractual provisions which are contrary to such prohibition as non-binding; • if the requested information exceeds the voluntary standard and the information commonly shared – requiring the reporting undertaking to inform the value chain undertaking on which of the requested information exceeds this scope and on the right of the value chain undertaking to decline to provide such information; • providing the value chain undertaking with the right to decline to provide any information that exceeds the voluntary standard and the information commonly shared; • clarifying that the provisions on the value chain cap do not affect any requests for purposes other than for reporting of sustainability information; they also do not impose or imply any obligation on the value chain undertaking to provide information within the limits of the voluntary standard and the information commonly shared. Amendments to recital 9 are aim at aligning its text with the amendments introduced to Articles 19a(3) and 29a(3) of the Directive 2013/34/EU. The change of wording in Article 29ca(1) of the Directive 2013/34/EU is a consequence of changes made to the value chain cap provisions.
Recital 9a Article 2(2) point b (iii) (Article 19a(3) of Directive 2013/34/EC) Article 2(4) point b (iii) (Article 29a(3) of Directive 2013/34/EC)	The introduction of provisions guaranteeing the protection of business secrecy was broadly supported by Member States. However, some Member States indicated that they may be too restrictive. In response to these concerns, the Presidency has revised the proposed provisions in Articles 19a(3) and 29a(3) so that the decision on omitting sensitive information does not have to be subjected to a predefined governance process. Furthermore, the list of conditions for omitting sensitive information has been slightly modified to make it less burdensome for the reporting undertakings. Lastly, the text has been supplemented with a provision clearly indicating that the reporting undertaking is not required to disclose classified information.

	Additionally in Article 29a(3) the wording has been adjusted to reflect the fact that this article deals with reporting at the group level, so it refers to the **parent** undertakings and the **group**. The text of recital 9a has been supplemented in order to clarify that the reporting undertaking is not required to disclose classified information.
Recital 13	In response to suggestions of some Member States, the text of the recital has been revised to emphasize that the sector-specific guidance which could be adopted by the Commission should also serve the facilitation of the application of the ESRS by reporting undertakings.
Recital 18a Recital 19a Article 3(3) (Article 5(2) of CSRD)	The Member State option allowing to exempt the first wave companies, which will ultimately be scoped out, from the sustainability reporting requirement also for financial year 2025 was broadly supported by the Member States. However, due to the ambiguity of the last sentence on the application of this exemption raised by many Member States, this sentence has been deleted from the text of Article 5(2) fifth subparagraph, as well as from recitals 18a and 19a. Furthermore, both recitals have been supplemented with a sentence clarifying that the Member States should implement this derogation in a way that ensures compliance with the principle of legal certainty. Moreover, for better clarity on the definitions of large undertakings and large groups, the cross-reference to these definitions included in Article 3(4) and (7) have been added in Article 5(2) first and third subparagraphs.
Article 5(1)	In response to calls from the Member States that the transposition period should be as long as possible, the provisions in Article 5 of the proposal include an optional clause stating that the Directive should be transposed within 12 months since its entry into force or by 31 December 2026, whichever comes later.

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EXPLANATORY NOTE

CS3D SIMPLIFICATION – 3rd Presidency compromise

Antici Group on Simplification (AGS)

4 June 2025, Wednesday

The purpose of this explanatory note is to provide delegations with additional information, clarifications and reasoning for the amendments proposed by the Presidency.

The explanatory note follows the order of the relevant provisions.

This document is for reference only.

ARTICLE	REASONING
Article 1(4) New recital 19c Recital 20	The proposed change in Article 1(4) clarifies the text of the Directive by specifying its scope, and thus, making it clearer what is and what is not subject to harmonisation, as outlined in Article 4. A new recital 19c clarifies the changes in Article 1(4). It explains that the CS3D aims to harmonise general due diligence obligations and it does not replace specific legal obligations in relation to human rights and environment. Instead, the CS3D is complimentary to them. Recital 20 introduces additional corrections, referring to due diligence provisions, in order to reflect changes made in Article 1(4).
Article 8 option 1: Recital 21, Recital 22, Article 8(2), Article 8(5)	The Member States generally expressed their support for the risk-based approach. However, due to divergent views on the application of that approach (full value chain v. limitation to tier 1), the Presidency has presented two options for the Member States' consideration: **Option 1:** This proposal does not require companies to identify and assess every single entity or risk, where that would not be reasonable taking into account the circumstances of the specific case. Article 8(2) clarifies that appropriate measures should be understood as reasonably available measures. Recital 21 outlines a full risk-based approach, replacing mapping with a scoping exercise in Article 8(2), which focuses on identifying areas across companies' own operations, those of their subsidiaries and, where related

	to their chains of activities, those of their business partners, where adverse impacts are likely to occur. Recital 21 also clarifies that when gathering necessary information, companies should only take reasonable measures. Moreover, recital 21 further outlines examples of relevant sources of information. Provisions related to plausible information do not apply in this option and information gathering is a part of scoping exercise. This approach is aligned with the international standards, such as the OECD Due Diligence Guidance for Responsible Business Conduct. Recital 22 reflects changes made in Article 8(5), where, for the purpose of scoping, only necessary information that cannot be reasonably obtained by other means, can be requested from business partners.
Article 8 option 2: Recital 21, Recital 21a, Recital 22, Article 3(1) point (w), Article 8(2), Article 8(2a), Article 8(5)	**<u>Option 2:</u>** Article 8(2) introduces a risk-based approach including a scoping exercise that is limited to 'tier 1'. Article 8(2a) also outlines when provisions on plausible information shall apply. It further clarifies that the company may seek contractual assurances, as opposed to communicating requests. In such case, the company is required to provide support referred to in Article 10(2) point (e). Recital 21 outlines what a risk-based approach limited to 'tier 1' entails. While entity-based mapping is still a part of the exercise, companies are not required to identify and assess every single entity or risk, where it would not be reasonable taking into account the circumstances of the specific case. Recital 21a maintains the provisions related to plausible information that suggest an adverse impact at the level of an indirect business partner. For consistency reasons, the definition of plausible information in Article 3(1) point (w) is maintained. Recital 22 reflects changes made in Article 8(5), where, for the purpose of scoping, only necessary information that cannot be reasonably obtained by other means, can be requested from direct business partners.
Recital 26, New Recital 26a	The change introduced in the recital 26 aims at clarifying the term of 'best efforts.' Moreover, the recital underlines that the Commission is working on defining sectoral pathways for companies to develop 1.5°C compatible plans and targets. The new recital 26a further clarifies that the transition plans for climate change mitigation in the CSRD/ESRS and in the CS3D are the same. The recital explains that climate-related transition plans in other areas of EU law have different scopes or pursue different objectives. This recital also suggests that it could be possible and useful to develop a common transition plan template, which could support the integration of activity or installation-level data into the company level transition plans, and thus, simplify reporting.

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Recital 27	The proposed changes in the recital reflect changes made in Article 27(4). Moreover, this recital clarifies that penalties cannot be based solely on the net worldwide turnover of a company.

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