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MEETING DOCUMENT

From:	Presidency
To:	Working Party on Company Law (Sustainability information)
Subject:	CSRD - Presidency Discussion Note for an initial exchange on selected issues

Delegations will find attached a Presidency discussion note on CSRD with a view to the Company Law (Sustainability information) WP meeting on 29 June 2021.

CSRD – Discussion NOTE for an initial exchange on selected issues

1. Introduction

This note aims at framing the discussion on selected points in the initial walk through of the CSRD proposal.

Following the presentations of the impact assessment and of the proposal by the Commission at the working party meetings of 7 and 17 of June, the Portuguese Presidency – in close cooperation with the incoming Presidency – aims at kick starting the discussions on the Proposal.

Based on the interventions at the 17 June meeting it is the view of the Presidency that MS are generally supportive of the proposal. However, there were some issues already raised by MS and also conveyed in written.

The Presidency is aware that the linguistic versions of the Directive were only published recently, and thus most delegations will still have scrutiny reservations on the file. For that reason, in this WP meeting the Presidency would like to focus the discussion on Definition, Scope and Location, since these are the most pressing issues at the beginning of the negotiations and where a key understanding by all delegations is important. The Presidency holds the view that the other topics warrant a deeper reflection and therefore would be better addressed during the Slovenian Presidency.

Contrary to what was said in the previous working party, and after duly consideration, the Presidency opted not to address the interlink with the Financial Services legislation (Taxonomy Regulation and Sustainable Finance Disclosure Regulation), in order to allow for a more informed discussion that can only occur after the publication of the Taxonomy Regulation Article 8 delegated act.

2. Definitions - Article 1, paragraph 2

Article 1, paragraph 2, of the proposal introduces four new definitions in Directive 2013/34/EU (Accounting Directive): i) 'sustainability matters; ii) 'sustainability reporting'; iii) 'intangibles'; and iv) 'independent assurance services provider'.

The definition of 'sustainability matters' is made through a reference to Article 2(24)¹ of the Sustainable Finance Disclosure Regulation, plus the introduction of 'governance factors'.

¹ 'sustainability factors' mean environmental, social and employee matters, respect for human rights, anti- corruption and anti- bribery matters.

Q2.1 Do MS agree with the definitions put forward in the proposal? Are the definitions sufficient aligned with other pieces of legislation and international reporting standards?

Q2.2 Do MS believe that other definitions should be added in order to allow for more legal clarity?

3. Scope - Article 1, paragraphs 1, 3 (Article 19a AD, only paragraphs 1 and 7) and 7 (Article 29a AD, only paragraphs 1 and 7)

Articles 19a and 29a of the Accounting Directive 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. Therefore, the CSRD proposal requires all large undertakings and all undertakings listed on regulated markets, except micro undertakings, to report detailed sustainability information. In addition, all undertakings that are parent undertakings of large groups should prepare sustainability reporting at group level.

Paragraph 1 of Article 1 of the proposal extends the scope of the articles of the Accounting Directive on sustainability reporting obligations to credit institutions and insurance companies that according to the Accounting Directive are not limited liability companies or are not deemed to have limited liability, including cooperative banks and mutual and cooperative insurance companies, provided they meet the relevant size criteria.

Paragraph 3 of Article 1 of the proposal replaces Article 19a of the Accounting Directive, which specifies the sustainability reporting requirements for certain companies. Regarding the scope, the proposal amends Article 19a as follows: it modifies the personal scope of the reporting requirements, extending their application to all large companies and all companies with securities listed on EU regulated markets, except micro-companies. In order to alleviate the reporting burden for listed SMEs, they are to start reporting in accordance with this Directive 3 years after its entry into application.

Paragraph 7 of Article 1 replaces Article 29a of the Accounting Directive so that all the sustainability reporting requirements of Article 19a apply as appropriate to parent companies that report on a consolidated basis for the whole group.

Q3.1 Do MS agree with the proposed extended scope of application of the Accounting Directive, including with the introduction of a proportionate reporting scheme for SMEs which will be voluntary for unlisted SMEs?

4. Location - Article 1(3) (Article 19a(1) AD) and 1(7) (Article 29a(1) AD)

According with the proposal, the information necessary to understand how sustainability matters affect the undertaking's development, performance and position should be reported in the management report. Subsidiary undertakings are exempted.

Articles 19a(1), 19a(7), 29a(1) and 29a(7) are amended in the proposal in the following way:

- Article 19a ("Sustainability Reporting")
 - Para 1 – Undertakings should include the information in the management report.
 - Para 7 – Part 1- Exemption:
 - 1) Undertakings which are a subsidiary undertaking are exempted if that undertaking is included in the consolidated management report of a parent undertaking.
 - 2) Undertakings which are a subsidiary from a parent undertaking established in a third country are exempted if that undertaking and its subsidiary undertakings are included in the consolidated management report, which is drawn up in a manner that may be considered equivalent.
 - 3) The consolidated management reports shall be published in accordance with Article 30, in the manner prescribed by the law of the Member State by which the undertaking that is exempted from the obligation is governed.
 - Para 7 – Part 2 – The management report of an exempted undertaking shall contain the following information:
 - 1) the name and registered office of the parent undertaking.
 - 2) the fact that the undertaking is exempted.
- Article 29a ("Consolidated sustainability reporting")
 - Para 1 – Establishes that the parent undertaking shall include in the consolidated management report information necessary to understand the group's impacts on sustainability matters,
 - Para 7 – Part 1- Exemption:
 - 1) A parent undertaking which is also a subsidiary undertaking is also exempted if that undertaking and its subsidiary undertakings are included in the consolidated management report of a parent undertaking.
 - 2) Parent undertaking which are a subsidiary from a parent undertaking established in a third country are exempted if that undertaking and its subsidiary undertakings are included in the consolidated management report, which is drawn up in a manner that may be considered equivalent.
 - 3) The consolidated management reports shall be published in accordance with Article 30, in the manner prescribed by the law of the Member State by which the undertaking that is exempted from the obligation is governed.

- Para 7 – Part 2 – The management report of an exempted undertaking shall contain the following information:
 - i. the name and registered office of the parent undertaking.
 - ii. the fact that the undertaking is exempted.

Q4.1 Do MS agree with the publication of the information in the management report?

Q4.2 Do MS agree with the criteria for exemptions?

Q4.3 Do MS agree with the requirements that must be complied by exempted entities?