

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.

Q.2.1 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), 6 and 7 (Article 29a AD, only paragraphs 1 and 7) and Article 2, paragraphs 2 and 3

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 6 of Article 1 amends Article 23 of the Accounting Directive, clarifying that the exemption regime for consolidated financial statements and consolidated management reports operates independently from the exemption regime for consolidated sustainability reporting. This means that a company can be exempted from consolidated financial reporting requirements, but not from consolidated sustainability reporting requirements. This is the case if the company's ultimate parent company prepares consolidated financial statements and consolidated management reports in accordance with EU law, or equivalent requirements if it is a non-EU country, but does not prepare consolidated sustainability reports in accordance with EU law, or equivalent requirements if it is a non-EU country.

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.

Paragraph 2 of Article 2 amends Article 4 of Directive 2004/109/EC (Transparency Directive), in order to take into consideration the sustainability reporting part of the regulated information to be drawn up and published under its provisions.

Firstly, it is amended in order to require that the annual financial report includes statements made by the people responsible for financial reporting in the issuer that to the best of their knowledge, the management report is prepared in accordance with sustainability reporting standards as required by the Accounting Directive, where appropriate.

Secondly, the references to provisions of the Accounting Directive and Directive 2006/43/EC (Audit Directive) are updated as regards the requirement to audit financial statements in accordance with Article 34(1) of the Accounting Directive, and to state whether the auditor or audit firm has identified material misstatements in the management report, and as regards the requirement to disclose the audit report, including the opinion on the assurance of sustainability reporting.

Finally, the references to provisions of the Accounting Directive as regards the preparation of the management report are updated and amended to require sustainability reporting. These amendments enable the extension of the sustainability reporting requirements to companies listed on EU regulated markets, except micro-companies, including non-EU issuers. They also clarify the legal mandate national competent authorities have to supervise sustainability reporting.

Paragraph (3) of Article 2 amends Article 23(4) of the Transparency Directive in order to empower the Commission to adopt measures to establish a mechanism for the determination of the equivalence of sustainability reporting standards used by non-EU issuers and to take the necessary decisions on such equivalence. Any decisions on the equivalence of sustainability reporting standards used by non-EU issuers will be independent from equivalence decisions concerning financial reporting standard

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?

Q3.2 Do MS agree with the amendments to the Transparency Directive, namely regarding non-EU listed companies and the equivalence regime?

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?