BUSINESSEUROPE

Position Paper

14 July 2021

CORPORATE SUSTAINABILITY REPORTING DIRECTIVE

Executive summary

- The ***business community is fully committed to global sustainability*** and to driving investment more into sustainable activities. More and more companies take an active role in this by integrating sustainability in business strategies and practices. We also understand the needs and expectations of stakeholders for more transparency and communication on business activities and impacts. Reporting is one of the key tools for achieving this, as well as creating trust between companies and stakeholders.

- The ***development of appropriate, proportionate and workable tools, including in the area of reporting, can help support this.*** This is only possible, if the costs/administrative burdens are well balanced with benefits, if tools provide adequate flexibility to companies to tailor reporting to their specific situation and stakeholders, and if reporting obligations allow companies to retain their global competitiveness and continue to generate wealth and create jobs. Frameworks must also ensure quality reporting, which meets the needs of information users whilst being feasible for preparers.

- We support the objective to have ***clearer and more coherent reporting obligations at EU level***, in particular given the multitude of existing and forthcoming reporting obligations scattered across different frameworks. This creates complexity and confusion for companies. We also agree on the need to reduce the increasing demand for information from companies coming from many different stakeholders.

- Unfortunately, ***we do not believe that the proposed directive meets all of these criteria.*** We have therefore proposed changes, which we believe would lead to improvements. In particular, we are concerned about the maximum approach taken, with the cumulative obligations on companies, i.e. a disproportionately large scope combined with extensive aspects which companies need to report on, further detailed requirements provided through mandatory standards, and mandatory assurance. A more balanced approach needs to be found between the scope, the overall level of detail of the requirements and the need for flexibility.

- We are also concerned about the ***costs of the proposal,*** as estimated by the Commission, which we find ***disproportionate to the objectives, as well as the feasibility of the ambitious timeline.*** Companies need to have enough time to implement the requirements, which will require in some cases major changes to internal reporting systems, especially for those newly covered by such obligations. This is crucial not only to make them feasible, but also in ensuring quality reporting.

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However, companies would only have two months to implement the final standards before the first year of application (2023) starts. This outlined timeline for the introduction of the additional reporting requirements and European standards does not allow for a proper implementation at company level.

- It is paramount that a ***proper and transparent due process*** is set up for the establishment of EU standards for sustainability reporting. Proper consultation periods need to be guaranteed so that preparers can contribute to the development of the standards. The IFRS due process as established for financial reporting could serve as a role model. Only a transparent standard setting process will lead to the general acceptance of EU standards.

- If this directive aims to be the authoritative sustainability reporting requirement for companies at EU level, it is crucial to ***take time to ensure that it meets the needs not only of information users, but critically those that will have to comply*** – real economy companies. We encourage the EU institutions to find a balanced approach, taking account of our proposals.

Remarks on overarching issues

- ***Company commitment to sustainability and reporting***

1. The business community fully supports global sustainability and more and more companies are committed to integrating sustainability in the core of their business strategies and models, in a way which fits their specific situation and the needs of their stakeholders. We are also in favour of actions to drive investment into sustainable activities and to support companies in the transition towards more sustainability. The development of appropriate, proportionate and workable tools, including in the area of reporting, taking account of the needs of the real economy, can facilitate this.

2. Businesses operate in an increasingly changing world, where the expectations of society and capital markets on companies to optimise positive impacts and mitigate negative ones are growing. This creates both opportunities and challenges for businesses, which they endeavour to manage. This has to be done in a way which also retains their competitiveness and market position, allowing them to continue to generate wealth and create jobs. These are the core tasks of companies, which create the basis for them to provide added value to society.

3. Business is also fully aware of the ***growing needs and expectations of stakeholders for more transparency and communication on business activities and impacts*** on social, environmental, consumer and human rights aspects, amongst others. Reporting is one of the tools to achieve this. Other tools, such as dedicated exchanges, can be equally valuable, including in meeting the needs of a particular stakeholder group. Whilst financial performance of companies is still crucial in attracting investment, sustainability has also become increasingly important in access to capital and financing. Also, companies see the value in reporting, to strengthen transparency, as an important element to create or reinforce a climate of trust between consumers, stakeholders etc and companies, as well as to see the risks they are exposed to. That’s why many businesses already conduct sustainability or ESG reporting according to different international, national and even regional frameworks and standards, not only due to legal obligations, but also on a voluntary basis. More and more companies also monitor and report on their global supply chains. In all of these actions, business works with a vast range of indicators, including those based on existing national and global frameworks, those provided by financial institutions and stock exchanges, and those developed by sectors or internally in companies.

4. In this context, we support the objective of the Commission to have a ***clearer and more coherent framework for sustainability reporting at the European level***, also in terms of the confusing multiplication of different reporting requirements in existing or forthcoming legislation (e.g. SFDR, Taxonomy, due diligence, sustainable corporate governance). However, this goal must be achieved with an acceptable balance between costs/administrative burdens and benefits and the reporting framework must be usable for companies. It must also avoid that the reporting becomes a tick-box exercise or simply a marketing tool and that good

quality data is generated. Unfortunately, ***we do not believe that the current proposal meets these requirements.*** The estimated costs of implementation - which are well reflected in the draft proposal - are excessively high and disproportionate to the objectives and are likely to hamper companies' abilities to create wealth and jobs. Therefore, we propose some amendments, which will ensure that businesses are supported in their reporting efforts and to bring coherence to the reporting obligations.

5. We note that information users, in particular investors, are critical of current disclosure practices for not always meeting their data and information demands. We understand the need for investors to have reliable information on companies' sustainability performance, where this is relevant to a specific financial product or investment opportunity. At the same time, when judging whether sustainability/ESG reporting practices meet certain objectives, it ***should be on the basis of justified needs of stakeholders rather than expectations, which sometimes go beyond this.***

6. Companies face different stakeholder needs and expectations when it comes to providing information, including not only from investors, but also from shareholders, consumers, clients, civil society representatives, employees etc. Whilst some information may be useful for all, it is ***difficult, if not impossible to report adequately to all stakeholders in one report, without compromising the relevance for some user groups.*** Whilst preparers would prefer to contend with a single reporting requirement, rather than dealing with requests for information from different stakeholders, it is unlikely that all needs can be met through standards, whilst ensuring that they are not overly detailed and prescriptive. In certain cases, investors and other stakeholders have different, sometimes conflicting demands, e.g. regarding the level of detail of the information.

7. Another complaint is the lack of comparability between companies' sustainability reporting. Given the differences between companies, even in the same sector, this is not always possible. However, ***where comparability makes sense, the directive should facilitate this.*** It should also ensure that reporting obligations/systems are workable for companies. At the same time, for reporting to be useful for companies and information users, they should have flexibility to report on the sustainability information considered material to the company and its stakeholders.

- ***Consistency of reporting obligations***

8. We fully support the goal of ensuring a consistent approach to reporting across different pieces of legislation. This is important for preparers and information users. Ideally, streamlining reporting requirements in one EU legal text would be the best way to ensure consistency and clarity, or even better, having a ***flexible reporting framework at international level.*** However, over the last few years, different reporting requirements have been developed in different legal texts, led by different

Commission DGs, making the situation extremely complex and confusing for companies.

9. We are not convinced that the proposed directive on corporate sustainability reporting rationalises or streamlines the reporting requirements at EU level. Aside from the fact that the reporting requirements of other pieces of legislation still exist, the proposed directive in fact adds to the reporting requirements. Furthermore, we are concerned about the articulation with reporting requirements in other legislation, in particular the taxonomy. For example, whilst the environmental topics that will be considered for inclusion in the forthcoming reporting standards are in principle in line with those included in the Taxonomy Regulation, the CSRD proposal in its Art. 19a suggests going well beyond the Taxonomy's disclosure. This is not only concerning as it adds reporting obligations, but also because the Taxonomy is a very recent piece of legislation, that will start applying as from 2022. In other words, while companies are still internally organising for Taxonomy reporting and dedicating significant resources to comply with the ***Taxonomy legislation***[1], the CSRD would add extra requirements on companies' disclosure in a very short time span and without any assessment of the Taxonomy's functioning. This could be counterproductive to the goal of the CSRD to have clearer and more coherent reporting requirements.

10. If the Corporate Sustainability Reporting Directive aims to be the authoritative framework for company reporting at EU level, there should be a ***clear commitment from the European Commission as a whole, that further reporting requirements in future legislation***, e.g. in the forthcoming due diligence and sustainable corporate governance initiatives, ***will be avoided.***

11. We note that in the interests of consistency, the proposed directive would amend four existing pieces of legislation – mainly the Accounting Directive, but also the Transparency Directive, the Audit Directive and the Audit Regulation. This approach makes sense. However, the process of amending different directives/regulations is likely to be very complicated and it will be crucial to make sure that the consistency aimed for is actually achieved in the end.

- ***Costs of reporting obligations***

12. We agree with the objective of the Commission to reduce unnecessary costs of sustainability reporting for companies, including by reducing the number of demands companies receive for sustainability information, increase consistency

[1] The Commission suggests that the taxonomy regulation would entail one-off costs of between 40,000 – 125,000 euros and recurring costs in the range of 20,000 – 50,000 euros. From ad-hoc feedback, some companies predict the costs to be much higher, even 7-digit figures. Also, we do not agree with the commission that 40% of companies under CSRD are not likely not face additional costs under the taxonomy regulation.

with other reporting obligations (see comments above), as well as providing more clarity.

13. However, the ***estimated costs of the proposal according to the Commission are very high:*** for preparers overall - €1.2 million in one-off costs and €3.6 million in annual recurring costs. As shown by a study recently conducted by CEPS on behalf of the European Commission, this is much higher than the current recurring administrative costs for providing non-financial statements under the Non-Financial Reporting Directive, which according to the study are on average EUR 82 000 per year, of which about 40% can be fully attributed to the legal requirements. From ad-hoc feedback received from some companies, the average cost of fully applying a sustainability standard or framework can exceed €100,000 per year, which is clearly not insignificant for SMEs in particular, but also for the many companies that are currently facing financial difficulties. Furthermore, depending on the national implementation, the costs could be even higher.

14. Also, as the Commission itself highlights, preparers will face additional costs as a result of the reporting requirements of Article 8 of the Taxonomy Regulation, since all those covered by the CSRD will have to comply with these. And this comes on top of the complications in complying with the article 8 Delegated Act's provisions of the Taxonomy Regulation, which are now becoming more apparent.[2]

15. Such significant additional costs, in particular at a moment when companies are trying to rebuild, are not acceptable, and they are not proportionate to the objectives of this initiative. Whilst we fully share the goal of providing adequate and quality information to users, for example in allowing for sustainable investment decisions and taking account of impacts on society, environment etc, demands for information must be based on justified needs, successfully balance costs and benefits and balance the needs of information users and feasibility for preparers. The directive needs to be amended to achieve this.

16. In some cases, the interests of various stakeholders regarding ESG information may converge in the long-term (e.g. around environmental aspects). At the same time, ***information users will remain an extremely diverse group with diverse information needs and expectations.*** Different companies receive different information requests from the market, they are expected to report to stakeholders in different ways, and they may report on topics that are useful for one group of stakeholders but not for others. It is therefore unlikely that the information provided in line with this directive and the future standards will satisfy all, while providing the necessary flexibility to be relevant for all companies in scope. In this sense, whilst the directive may in some cases reduce the number of demands companies receive for sustainability information and convince users not to ask for additional or different information, this will certainly not be the case across the board, whereas this is a key objective of the initiative. Therefore, the figures highlighted by the commission, i.e. that the use of standards could lead to annual savings of €24200 - 41700 per

[2] https://www.businesseurope.eu/publications/taxonomy-disclosure-obligations-draft-art-8-delegated-act-businesseurope-reply-public

company, based on the assumption that standards would completely eliminate the need for additional information requests to preparers, is not realistic.

17. Also, the aim of providing a reporting framework which meets the needs of a diverse range of information users, leads to an excessive level of detail and overly prescriptive directive. It is therefore essential that the directive is amended to make it more proportionate, cost-effective and sufficiently simple. One way to support this could be to differentiate the obligations on information provision between different stakeholders, in particular taking account of the relationship between investors and companies, as opposed to other stakeholders.

18. We note that the Commission assumes that if the EU does not take action, information requests to preparers will increase anyway. However, this will depend on dynamic developments regarding other reporting frameworks or tools. For example, regarding climate change, many companies are now using the TCFD recommendations or Science Based Targets; this would have happened without EU standards on sustainability reporting.

19. We also note that the impact assessment of the Commission looks at the costs overall for different parts of the proposal (e.g. audit, scope, standards), however not at the combination of different aspects (e.g. audit+scope). In many cases, it is the cumulative effect of different measures that increase the costs. Therefore, this should be better taken into account.

20. We also suggest that new reporting requirements should be complemented with practical, technical and financial assistance aimed especially towards SMEs, to ease the transition to the new rules.

- ***Feasibility of timeline***

21. The ***timeline for developing the standards is not realistic and makes it very difficult to ensure quality reporting that supports implementation of the directive.*** This is due to the fact that the development of standards will be done in parallel to the EU institutions negotiating the directive, which risks them not being aligned. Quality should be prioritised over speed. We call for development of the standards only once the directive is agreed.

22. The timeframe given for businesses to organise themselves in line with the requirements of the amended directive (i.e. by the end of 2022 and collating relevant data as from 1 January 2023) is extremely challenging. The adjustments necessary to meet the new obligations cannot not be implemented at such short notice. On top of the actual reporting, they would inevitably disrupt current systems and require extensive internal changes in some cases (e.g. establishment of new reporting processes and structures, involvement of stakeholders, and the implementation of (new) IT systems). This will require more capacity in some companies, in particular those for whom the requirements will apply for the first time. We therefore call for the deadline for companies to implement to be extended.

23. Also, there is ***not enough time for implementation of the standards following their adoption and endorsement.*** We agree that the standards should facilitate compliance with the new legal obligations and provide for quality reporting, however, this will be difficult to achieve unless at least 24 months are given to companies to take them into account. This is also based on the lessons learned from companies' preparation to implement article 8 of the taxonomy regulation, as it will be difficult for companies to gather the necessary data on their environmental performances (with criteria still under development) and based on unclear and complex reporting requirements (with Art. 8 Delegated Act still to be adopted and approved). In financial reporting, preparers usually get several years to implement new reporting standards[3]. Preparers need enough lead time for implementation - two months are not sufficient.

24. Another option would be to link the date on which the reporting obligations enter into force to the date that the standards are developed. This would mean that the introduction of new standards will be accompanied by an extension of the deadline. This provides companies with the ability to prepare themselves for the upcoming reporting obligations and enables them to deliver the required information.

25. It also has to be ensured that the development of the EU standards follows a proper and transparent due process from the beginning and throughout their development.

26. In line with the transparency obligations for listed companies, an additional option could be a gradual phase-in of the requirements. This should take account of the differences between listed and non-listed companies. For example, first applying the reporting obligations to large, listed companies, and then, following an assessment, considering extending the scope to large non-listed companies.

Remarks on main changes to Accounting Directive

- ***Extension of scope***

27. The scope of the current directive, i.e. Public Interest Entities (PIEs), usefully allows for consideration of national circumstances (since PIE are determined at national level). The Commission claims that extending the scope will increase clarity, however, due to the extensive scope, ***the proposal is completely disproportionate***. Covering all large companies, due to the definition of the Accounting Directive, would include many companies which would otherwise be considered as smaller or medium-sized (i.e. those meeting two of the three following criteria: (a) balance sheet total: EUR 20 000 000; (b) net turnover: EUR 40 000 000; (c) number of employees: 250).

[3] For example, for IFRS 16 Leases, the final standard was published three years upfront to the first date of application.

28. As highlighted by the Commission, this means that the directive would cover nearly 5 times the number of companies compared to the current directive (49000 compared to the current 11600 companies). Added to this, studies indicate that the number of covered companies could be even higher than 49000: a study recently conducted by CEPS on behalf of the European Commission shows that whilst around 2000 companies are in the scope of the non-financial reporting directive (NFRD), in practice approximately 10,000 additional companies are obliged to prepare non-financial statements due to national transposition. We are concerned that the Commission's estimate does not take into account the potential of national transposition and the specific situation/starting point of different member states or companies. For example, in Germany, 550 companies have to report now, whereas estimates show that this would go up to 15,000. In Italy, estimates show that the number of companies covered would rise from 200 to 4000 (in both cases, much more than a five-fold increase). Also, experience from member states where all large companies are already covered in some cases shows that this did not have added value. In Sweden, for example, the scope of the NFRD was extended to all large companies (not only listed ones), when the NFRD was implemented. A report published by the Confederation of Swedish Enterprise in 2021, based on interviews with a sample of large unlisted companies, showed that few, if any of the companies interviewed got feedback of questions from stakeholders about their sustainability report; companies highlighted the need for flexibility on what to report and that more detailed requirements for mandatory reporting were not supported.

29. We would be grateful for keeping the existing concept of "public interest entities" and more clarity on which two of the three criteria for determining large companies in the Accounting directive have been taken into account in estimating this scope. This causes differences in calculations. In fact, we expect that if the two criteria of balance sheet total and net turnover are taken into account, this would add more companies to the scope.

30. Bearing in mind that article 8 of the taxonomy regulation will apply to those covered by the new scope of the proposed directive and the existing concerns regarding the feasibility in applying article 8, the fact that many more companies (including listed SMEs) will have to apply this, is of great concern.

31. Even though we appreciate that ***SMEs*** (except micro-entities) listed on regulated markets would not have to apply the provisions straight away, but only 3 years later than the others, this simply delays the application of very detailed, prescriptive requirements, which we don't find appropriate for such companies. We are also concerned that this may have the unintended consequence of disincentivising SMEs from seeking a listing on a regulated market, to avoid coming under the scope of the directive. We request an exemption for SMEs from the legal requirements and rather to provide them with guidance and support through the proposed voluntary standards.

32. We support that the ***reporting obligation is still at group level***, i.e. subsidiary companies are exempted from the obligations in the directive, if the parent company reports, albeit with some conditions. Since it supports transparency and clarity, we can accept the condition that the subsidiary company publishes the consolidated management report of the parent company and states in its own management report that the company is exempted from the requirements of the Directive. However, we do not support the possibility for Member States to require translation of the report, as this would be very costly. Also, we do not agree that a subsidiary company of a parent company established in a third country can only avoid the reporting obligations, if the report of the parent company is considered equivalent to the manner required by the sustainability reporting standards in article 19b. It is not clear who should assess this equivalence, which could be open to interpretation. If a third country reporting requirement is not deemed as equivalent to the EU reporting requirements, in effect, companies would have to comply with multiple legislations. This would be more appropriately based on the adherence to recognised international reporting standards. It is important to provide flexibility to companies operating globally in this respect, so that they can choose the most meaningful reporting scope for the company and relevant stakeholders. We also need further flexibility regarding group reporting. Companies use different ways of consolidating entities for financial reporting. They should be able to decide how to consolidate reporting for ESG data in groups, irrespective of the way they decided to report financial information.

33. Many of our concerns related to the scope are also due to the ***cumulation of requirements,*** i.e. applying very detailed, prescriptive requirements to a broad set of companies. A more balanced approach needs to be found between the scope, the overall level of detail of the requirements and the need for flexibility. It is not proportionate or feasible to go for a maximum provision in all of these areas. Regarding the scope, we believe more assessment is needed of the impact and cost in member states where the scope of the current non-financial reporting directive was extended, in particular to large non-listed companies. The coverage of EU subsidiaries of non-EU companies should also be assessed carefully, in terms of ensuring the global competitiveness of EU companies, whilst at the same time, taking account of adherence to international reporting frameworks. In order to create coherency with International Financial Reporting Standards (IFRS), one option could be to cover only large-listed companies or to have a gradual application of the requirements, to allow companies more time to organise themselves.

- ***Content of the reporting, mandatory standards, and how to report***

34. The move from 'non-financial' to ***'sustainability' and 'ESG' reporting*** in general reflects today's company practices and we therefore support this. However, what is more crucial is that the actual content of the reporting requirements makes sense,

is clear and proportionate. This is essential in ensuring quality reporting that meets the needs of different users and is feasible for preparers.

35. Unfortunately, ***the proposal is not proportionate***, as it includes overly detailed and prescriptive reporting requirements, taking away the crucial flexibility for companies to report on those aspects which are most relevant in their specific context. Whilst we appreciate that some elements are carried over from the non-financial reporting directive and that some companies may already be reporting in line with the directive, for the majority of companies who would be covered, the proposal goes beyond existing requirements and practices. We are also not convinced that this will give preparers more certainty, due to the difficulty to meet some of the new reporting obligations. And since the obligation at EU level is to include 'in particular' the information listed, it means member states can go beyond this, with more requirements.

36. Also, the first set of mandatory standards would cover all aspects of paragraphs 1 and 2 of article 19a, making them obligatory for all companies. We understand that the standards developed later would only oblige companies to provide "complementary information with regard to the sustainability matters and reporting areas listed in Article 19a(2), where necessary", however it is not clear which of the aspects are deemed 'complementary'. Therefore, we need more clarity on exactly what companies will have to report on according to the standards and the legislation. This is essential for legal certainty for preparers. Given that the development of standards will be a dynamic process, it may be challenging for companies to keep abreast of the changes, new standards, their applicability and the expectations in terms of reporting requirements. This will require significant technical capacity. Support will be needed for companies in this area, particularly SMEs.

37. More flexibility should be left to companies to decide which aspects are most relevant to their particular situation, and taking into account the materiality test, thereby allowing them to be pro-active and avoiding a box-ticking exercise. The approach suggested by EFRAG's taskforce on sustainability reporting to distinguish between cross-sectoral, sectoral and enterprise level requirements could also be a useful reference. If certain aspects don't apply in the specific company situation, they should not have to report on them. To make this clearer in the directive, rather than stating 'in particular' in article 19a, paragraph 2, is would be preferable to state 'where relevant'. This should be carried through regarding the standards, i.e. article 19b, paragraph 1a should be amended to state that the delegated acts should specify the information that undertakings are to report 'where relevant' in accordance with paragraphs 1 and 2 of article 19a or the approach taken for the standards to be developed later (in 2023), i.e. to provide 'complementary information…where necessary' should be used also for the earlier standards (2022).

38. We are particularly concerned about the new obligations to ***describe potential impacts and forward-looking information.*** It will be very difficult for companies to provide accurate information on these aspects, in particular since this is also an obligation for the company's value chain. This may create unrealistic expectations

of some information users, which despite their efforts, companies are simply not able to meet or may not result in good quality reporting. It is already very complex for companies to get information throughout their entire supply chain, whereas the value chain is much broader. In this context, it will be important that the obligations are defined and clarified in relation to the future EU initiative on due diligence, to avoid duplicating or contradicting requirements. Also, forward looking information can reveal a lot about a company's strategy and is therefore likely to often be commercially sensitive. We have already expressed this concern in relation to the taxonomy regulation. Forward-looking information may even be considered as speculation in some cases for publicly listed companies, which is not allowed. Also, the assurance of forward-looking information is very difficult to ensure (bearing in mind that the proposed directive introduces an obligatory assurance of the information). Given the lack of certainty in forward-looking information, this also increases the risk of litigation. We therefore suggest that the directive is amended so that such information only needs to be provided where it is deemed necessary and relevant.

39. We are also concerned that the draft directive would put a new legal obligation on companies to report on due diligence processes implemented with regard to sustainability matters. Whilst human rights due diligence concepts are well established, both in the UN Guiding Principles on Business and Human Rights and in the OECD Guidelines for multinational enterprises and the subsequent guidance documents and many companies take actions to report on this, due diligence on sustainability matters (including environmental, social etc.) is not well defined. This would therefore create new legal uncertainties, also since this new concept is not in line with the human rights due diligence concepts already established. For reasons of policy coherence any reporting obligations on due diligence on human rights should be aligned with the leading international standard, the UN Guiding Principles on Business and Human Rights (UNGPs), and for broader topics with existing or future legal obligations (e.g. the green taxonomy regulation, the future due diligence framework) in order to avoid further inconsistencies.

40. Engagement of a company with its stakeholders is important, including in the reporting process. This is common practice in many companies. We support the goal of involvement of relevant stakeholders in an appropriate way, as determined by the company, as this helps to ensure that reporting meets the different needs of the information users as far as possible. However, the proposed directive goes one step too far, by introducing a new obligation on companies to show how their business model and strategy take account of the interests of their stakeholders. This would be very complex, bearing in mind that there may be many different stakeholder interests, some of which may be contradictory, and it may simply not be possible to meet all stakeholder interests (particularly if the stakeholders are not defined by the company itself). Taking decisions on strategy and business model are key tasks of the company, which are done in a way which balances the different stakeholders' needs, assessing which are the most relevant. The directive should be amended so that the obligation is to report on this process rather than justifying their business model and strategy.

41. ***Some of the requirements indirectly go beyond reporting.*** Whether intentional or not, the directive must not create extra obligations out of its scope. This is partly linked to the proposed broad scope of the directive, which means that it would cover many companies which do not yet have well-developed sustainability programmes and monitoring systems in place. For example, the obligation to provide a description of the targets related to sustainability matters set by the undertaking and progress made in achieving them, as well as information on indicators, indirectly creates an obligation to set targets, develop indicators and monitor progress. Another example is the obligation to provide a description of the role of the administrative, management and supervisory bodies with regard to sustainability matters, which indirectly requires giving such bodies a role. This could also interfere with the freedom of companies, in accordance with their national frameworks, to choose and determine the structure and competences of their corporate bodies.

42. We support the ***possibility***, as in the current directive, ***to omit information,*** which would harm the commercial position of the company. We believe it should be a general right granted by the directive rather than an option for member states to take up or not. For the sake of a level playing field, it is essential that companies across the EU are able to protect commercially sensitive information. However, we have some concerns on how companies would be able to exercise this right, namely regarding the need to get the justification of the members of the company's supervisory body each time this occurs, and the fact that the directive in general only allows this in very narrow circumstances. It would be necessary to look for a solution which is more practical and effective in practice.

43. The proposal to make it ***obligatory to report on sustainability matters in the management report*** does not seem to be justified, particularly the argument that the information is not easy to find otherwise. The aim should simply be about ensuring access to both financial and sustainability/ESG reports, e.g. by publishing on the company website. Also, this takes away an important flexibility for companies in terms of when and where to publish the information. For example, flexibility to report separately to investors and to other stakeholders with different frequency or timing is important to companies. This depends on the company's general internal processes and systems and those specifically for reporting, as well as on the users of the information. Obliging inclusion in the management report may also be detrimental for communication for some companies, as it does not allow a company to sufficiently put the information in context and tell the whole story in a comprehensive way. Furthermore, for many of the companies that are newly in the scope of the CSRD, the data and systems needed for financial reporting have been developed over decades. In contrast, sustainability reporting will take many months to prepare. Therefore, obliging integrated reporting already, in particular for companies doing this for the first time, will be complex, if not impossible.

44. Of course, for those companies that wish to report within the management report, this should be possible, but it should remain optional, at least in national implementation. What is important, is to consider which sustainability/ESG

information is relevant from a financial point of view, and whether it should therefore be included in the annual management report, or whether, depending on the materiality for stakeholders other than those targeted by the annual report (i.e. investors), it would be better provided in a separate document. Companies must be given the flexibility to make this kind of judgement.

45. On the ***topics to report on as part of 'sustainability matters',*** we support the approach to stick to the scope of the current reporting requirements (i.e. environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters). We also agree that standards can support companies implementing the legal obligations and ensure quality reporting, however only if they are voluntary and non-normative, if they provide guidance, and if they are developed in a transparent and open way. Therefore, we do not support the proposal for ***mandatory standards***, which would prescribe more detailed reporting requirements. This does not leave enough space to companies to report on what is relevant to them, based on a materiality assessment, including the needs of the users of the information. Also, this would create obligations on companies much like legislation, whereas standards should rather be used to guide and support companies in devising reporting methodologies, defining material topics, engaging with relevant stakeholders etc.

46. We do support the goals of the EU's Green Deal and UNFCCC, but cannot see the logic for a specific reporting obligation within the directive on the Paris Agreement. We believe this specific provision is not consistent with the overall approach of the directive to comply with standards and do not understand the proposal to prioritise climate over other environmental and non-environmental objectives. This could also duplicate the reporting obligations in the taxonomy regulation, notably in relation to climate change mitigation and adaptation disclosure.

47. We also have strong concerns about the feasibility for companies to report on intangibles, e.g. intellectual, human, and social and relationship capital. In particular, the obligations to develop indicators in this area will be very complex, as by nature these aspects are not easy to measure. Once again, for those companies who are ready for this and for whom it is relevant, it can be an option, but this should not be a legal obligation.

48. Furthermore, the proposed directive already highlights the main ESG factors in detail, ***pre-empting the content of the future standards***. This is not acceptable, as the standards should be developed in an open and transparent way following a transparent and proper due process, involving stakeholders, without the legislation already determining them. Whilst we note that the information indicated in relation to ESG in the directive is not exhaustive (use of wording "*including information about"),* this already inappropriately provides a minimum set of information. As a general principle, it is important that level 2 regulation does not exceed the mandate given in level 1 regulation.

49. Notwithstanding the comment above, regarding the specific aspects covered under ***environmental, social and governance aspects***, we note positively that the

environmental ones are broadly the same as the taxonomy regulation (although the wording is slightly different from the taxonomy environmental objectives in some cases, and it is unclear whether this is intentional), therefore providing for some consistency, as well as remaining fairly broad. On the proposed social aspects, it is important to take into account that many of them are determined by national systems and practices, including by social partners and this must be respected in any future standards. Overall, they remain broad, which is positive. However, we are concerned about the reference to some international frameworks, such as the ILO 8 core conventions. Whilst some companies may make reference to ILO conventions, e.g. in their business/sustainability strategies, obliging compliance of companies' activities with the eight fundamental ILO conventions, is not appropriate, as they are obligatory for states who have ratified them.

50. We support efforts to make the ***concept of double materiality*** clearer and to guide companies in this respect. Clear definitions and examples are needed to eliminate ambiguity and guide/help company in identifying what is material. This helps to increase the quality and meaningfulness of reporting. Voluntary standards offer an opportunity for this. We fully support the overall aim to allow companies to report only on what is material to them and their stakeholders (and not on other topics/aspects), however, we are not reassured that in practical terms, the directive actually allows for this. This is due to the detailed requirements on the content of the reporting (article 19a, paragraph 2) and in the description of ESG topics. The directive itself needs to be amended to make this completely clear.

51. A distinction should be made between listed and non-listed companies when imposing additional transparency obligations necessary for providing investors relevant information. Existing transparency obligations are limited or absent for non-listed companies and the EU-IFRS standards regarding financial reporting for the annual report are only mandatory for listed companies.

52. We would like to have clarity on how the materiality concept can be correctly implemented when the standards will be mandatory for all companies in scope, (also bearing in mind that all aspects covered in article 19a paragraph 2 will be part of the standards – see points 36 and 37 above). How will this allow for companies to select which topics to report on, based on their own needs and those of their stakeholders? And how will it avoid companies reporting on irrelevant aspects? Reporting will only be of high quality and relevant if it is on what matters to the company and relevant stakeholders.

53. The materiality check is a process that companies need to go through to evaluate whether certain information is significant and should therefore be provided, and what information is not significant and can therefore be omitted. The company itself may also deem a topic material, without it being highlighted by stakeholders. This should take account of which topics/risks/opportunities would reasonably be expected to influence the performance of the company and on which aspects does the company have an impact on society/environment. This is precisely the kind of aspect that companies would need guidance on, through voluntary standards.

54. We believe that where standards are necessary, they would be better developed at international level, given that companies operate and impact at a global level. The obligation on the Commission to take account of the work of ***global standard-setting initiatives*** for sustainability reporting, as well as existing standards and frameworks for natural capital accounting, responsible business conduct, corporate social responsibility, and sustainable development is positive, however it is not sufficient to ensure a consistent and compatible approach at EU level with relevant international reporting standards/frameworks and recommendations, such as IFRS, TCFD, GRI etc. It is important that the EU reporting requirements do not put European companies at a disadvantage globally in terms of reporting burdens and costs, as well as avoiding a patchwork of contradictory or duplicating reporting standards across the world. It is also important in ensuring that companies operating globally do not face challenges that they need to comply with multiple reporting standards. EU reporting standards should therefore at the very least mutually recognise, but preferably align with reporting from existing international frameworks/standards, including those that will be set under the initiative of the IFRS Foundation. In addition to amendments to the directive to ensure this, the Commission could add an obligatory check to determine the degree to which the European reporting standards are aligned with international initiatives during their development, as well as an obligation to justify deferring from international standards/frameworks, where it decides to do so.

55. Unfortunately, it seems that the proposed directive goes for a maximum approach, covering a broader range of aspects and trying to meet the needs of a much wider group of stakeholders than existing standards/frameworks in the marketplace. Inspiration should be taken from the current standard setting process of the IFRS, which is positively focusing on enterprise value and taking a narrower approach to leave more flexibility to companies. It is important to ensure that EU sustainability reporting standards are comparable to international ones (IFRS in particular). This is crucial for consistency for information users, in particular investors, but also for preparers in terms of reducing burdens and costs.

56. We are against empowering the Commission to adopt delegated acts in this field and are strongly concerned about the implications of ***mandatory EU sustainability reporting standards by means of delegated acts***. Although the standards are likely to be drafted by an organisation external to the Commission (most likely EFRAG), with involvement of relevant stakeholders, the final adoption of the standards will be by the Commission through delegated act. Such unilateral measures without support of the European Parliament and Council may put into question the added value of the standards and is not an acceptable way to create obligations for business. Furthermore, advice will also be provided by a number of EU supervisory authorities, which, given the role of such bodies, could influence the outcome in the direction of more normative or quasi-regulatory approach. It is therefore also crucial that the different advice/inputs are looked at in a balanced way, taking into account the needs of the real economy, who will actually have to prepare and do the reporting. It is paramount that a proper and transparent due process is established.

57. To ensure broad and good input to develop the future standards, quality reporting and good implementation of the legislation, adequate time is needed. Unfortunately, the ***proposed timing is overly ambitious*** and is likely to seriously endanger this. The proposal requires the Commission to adopt a first set of standards by 31 October 2022. This means that EFRAG (or whichever body is chosen to develop the standards) would need to work in parallel to the directive being amended/approved by the EU institutions. This risks that the standards do not reflect the final directive, whereas they are meant to support its implementation and guide companies in this respect. Furthermore, to meet the deadline of the Commission to come with a delegated act at the end of 2022, EFRAG would need to have prepared the standards by Summer 2022, including an appropriate and timely due process including proper consultation with external stakeholders. This will not allow for the necessarily high-quality work.

58. Furthermore, even if a delegated act is published by the Commission in time, the scrutiny process by the EP and Council needs to be factored in, which means that the standards are unlikely to be available before the first reporting period for companies, whereas they are meant to support them.

59. The deadlines for developing the standards and implementation at company level therefore need to be prolonged in the legislation itself. The process for establishing and implementing standards for financial reporting could serve as a role model.

60. We support the development of ***separate voluntary sustainability reporting standards for small and medium sized companies***, if they stay voluntary and are not seen as a blueprint for future legislation. SMEs, whether covered by the legal requirements or not, will be confronted with reporting requirements. They often do not have the technical expertise or necessary resources to be part of the process. Therefore, we believe developing tailor-made, voluntary, non-normative standards to guide them, including to produce the information needed within the supply chain, can be useful. This may also help where financial institutions are requesting sustainability information from SMEs, to provide them with capital, thereby allowing them to benefit from new sustainable investment opportunities. It will be important not to simply scale down the full standards, but rather to look at the nature of SMEs and their specific needs, not only ensure adequate simplicity in terms of quantity, but also content.

- ***Introduction of mandatory assurance of sustainability information***

61. We are ***strongly against the introduction of mandatory assurance of sustainability information at EU level.*** Non-financial information should not be treated in the same way as financial information, as the nature of the information is different. While financial reporting in general provides quantitative information, which can be clearly defined and measured, the meaningfulness of non-financial reporting often depends on qualitative information and context, which it can be difficult to assure in a comprehensive manner. It may also lead companies to limit their disclosures in order to enable a pragmatic approach for the assurance process. Mandatory assurance would also lead to disproportionate burdens and

costs compared to the added value, in particular when combined with the very detailed requirements for reporting (some of which would be very difficult to assure), and the very broad coverage proposed. This has been shown in Denmark, where an assurance requirement was in fact abandoned, as it turned out to be impractical to implement and not fit for purpose. Costs for preparers are also likely to increase due to the fact that, to ensure independence, those providing assurance on sustainability reporting cannot provide other consultancy services. Therefore, if a company employs a consultant to prepare a report, which is likely to be the case for many of those newly covered by the legislation, they would need to use and pay another provider for the assurance service.

62. It is not a given that enough assurance providers currently have the necessary expertise to provide assurance of sustainability information, at least not within the timescale needed for a successful implementation of the Directive. Sustainability information is extremely diverse compared to financial information. Also, given the proposed broad coverage of the Directive and the overly ambitious timeline, there may not be the necessary capacity to meet the needs of preparers in time for the first reporting by companies. It is also important to carefully assess the impact on competition in the audit market such as the ability of smaller firms to operate effectively.

63. If reporting entities wish to provide additional assurance of sustainability aspects, e.g. by way of independent assurance, they are free to do so, by considering the identified, primary users and purpose of the information. This can indeed be useful to enhance the credibility of the disclosures made by the reporting entity. However, it should be left to the company to decide. The current Non-Financial Reporting Directive takes the right approach, in leaving this possibility to the national level implementation. The proposed Directive should revert to this.

64. We note at least that the proposal is for limited assurance for now, however it also leaves the door open to move to reasonable assurance requirements later. This would not be appropriate, in particular as this would increase costs even further. There should be no automatism included in the legislation to move from limited to reasonable assurance. The costs of assurance should not be underestimated and it is therefore important that the companies can take management decisions individually and allocate resources effectively. Also, whilst some companies may choose to do this, we are not aware of external assurance standards that have been developed to support such stricter reasonable assurance.

65. It is also important that the Commission clarifies and explains the differences between limited and reasonable assurance and why different parts of the annual report are examined in different ways, so that stakeholders have a better understanding of this. It is also important that an examination of forward-looking information does not lead to the company concerned being exposed to negative publicity that could harm the reputation of the company.

- ***Single electronic reporting format***

66. We are concerned about the proposed new article 19d requiring companies to prepare their financial statements and their management report in a single electronic reporting format, and to mark-up sustainability information by digitally tagging it. As already highlighted, Member States must continue to have the possibility to allow companies to opt for a separate sustainability report. In addition, whilst, if done in the right way, there can be benefits of tagging information in general to provide easier digital access, the usefulness of electronic reporting in relation to sustainability/ESG information is questionable and it is important to ensure that the potential benefits are not outweighed by the risks. These include comparing aspects or data which are not comparable (even between companies in the same sector) or taking data out of context, which can lead to a false representation of the information or make it less understandable. This partly depends on the level of the tagging. Also, it is important to avoid that this leads to a purely numerical overview, as companies also need to provide the narrative part, to be able to give the context and tell their overall story.

67. We therefore suggest that this should not be initiated straight away, as more assessment and reflections are needed. This should include assessing the outcome of digital tagging for financial reporting, including the benefits, disadvantages and costs, whilst bearing in mind that this would only provide a snapshot, given that sustainability/ESG information is very different to financial information.

68. A more feasible option would be to create a single platform, where all sustainability reports would be uploaded to a repository and easily accessible and comparable by all stakeholders.

- **Penalties and sanctions**

69. We are concerned that the proposal goes too far regarding penalties and sanctions despite providing useful guidance on attenuating or aggravating circumstances to be considered. The proposal substantially amends Article 51 of the existing accounting directive by adding a requirement on Member States to provide for at least the following administrative measures and sanctions in case of a breach of the national provisions transposing Articles 19a, 19d and 29a:

    (a) a public statement indicating the natural person or the legal entity responsible and the nature of the infringement;
    (b) an order requiring the natural person or the legal entity responsible to cease the conduct constituting the infringement and to desist from any repetition of that conduct;
    (c) administrative pecuniary sanctions.

70. We are particularly concerned by (a), which seems like a form of naming and shaming sanction, which we believe is disproportionate and inadequate. Also, as mentioned numerous times in the proposal, reporting is a collective responsibility of

the competent bodies of the company. Singling out individuals would not be appropriate, nor do we see the justification and proportionality of this measure in the light of the guiding principles of the GDPR.