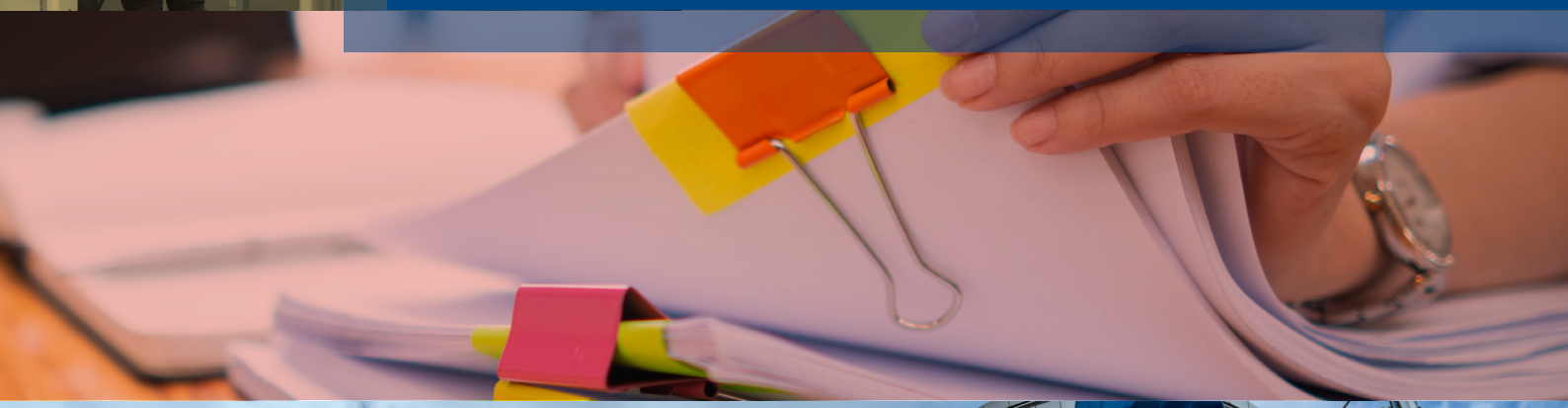
BUSINESSEUROPE

OMNIBUS I
CS3D, CSRD AND TAXONOMY

POSITION PAPER



1. GENERAL REMARKS

The European Commission has launched what it calls an "unprecedented simplification effort" to reduce unnecessary regulatory costs and burdens for European companies. The European business community calls on decision makers to work towards this objective and make the European marketplace more competitive as rapidly and effectively as possible.

BusinessEurope has made 68 concrete proposals on how to address the most pressing regulatory burdens in 11 policy areas. These proposals are designed in a way that will allow to achieve the EU policy objectives without disincentivising investments needed to make Europe more resilient, sustainable and digital. We trust these proposals can contribute to a wide-reaching regulatory burden reduction programme with a clear target and timeline.

The publication of the first Omnibus covering the Corporate Sustainability Due Diligence Directive (CS3D), the Corporate Sustainability Reporting Directive (CSRD) and the Taxonomy Regulation is an important first step towards the ambition to achieve a reduction in regulatory burden. During the implementation of CSRD and Taxonomy, we have repeatedly stressed that these place a disproportionate burden on companies, draining excessive resources and efforts away from the work on the actual green and digital transition. We have also consistently raised concerns about key provisions of the recently adopted CS3D. Decisive regulatory burden reduction efforts on these three EU legislations are therefore critical.

In this light, BusinessEurope welcomes the recent approval by the European Parliament and Council of the EU on the "stop-the-clock" proposal as a means to address some of these challenges. We also appreciate the Commission's work towards finding a quick solution to the issues affecting wave 1 companies so that there is minimum uncertainty on the way forward. Crucial for these proposed amendments to make a real impact in achieving the objectives of the legislation is the timely and uniform transposition by Member States, in particular of the "stop-the-clock" proposal (soon to be in force). We also welcome the proposal by the Commission to bring forward the publication deadline for the Commission Guidelines on CS3D.

Member States' authorities and businesses alike require a genuine ''implementation period'' to provide stability, predictability and ample time for businesses to understand, adjust, succeed and compete. Despite these positive steps, the Commission's proposal falls short on some key parameters. This paper outlines those outstanding problems and proposes concrete solutions.

THE FOLLOWING **5 KEY PRINCIPLES** SHOULD BE AT THE CORE OF THIS SIMPLIFICATION EXERCISE FOR A SUCCESSFUL OUTCOME:

1. Burden reduction: Reduce significantly the regulatory burden, with a sharp focus on competitiveness, proportionality, practicability, and interoperability with international standards, without putting into question the policy objective.

2. Legal certainty: Reduce the legal uncertainty by securing a swift transposition by Member States of the stop-the-clock directive, achieving among co-legislators an agreement in the substantive parts of the proposal by the end of 2025 and by adopting level 2 measures in a timely manner. Moreover, increase the legal certainty in the substantive part of the CS3D and CSRD.

3. Coherence: Align reporting requirements of the financial sector and non-financial undertakings, and requirements on climate transition plans, so that a coherent EU framework is achieved.

4. Harmonisation: Ensure harmonisation across the single market and timely transposition of EU legislation, without gold-plating, to ensure a level playing field for EU companies.

5. Minimising negative impact on SMEs: Minimise the trickle-down effect of the legislation in relation to smaller companies that do not fall under the scope.

2. CROSS-CUTTING ISSUES

SCOPE

Problem

The Commission proposal falls short in aligning the scopes of CS3D, CSRD, and the Taxonomy. While BusinessEurope appreciates the flexibility introduced for voluntary Taxonomy reporting for companies with less than 450M EUR turnover to align it with the CS3D scope closely, companies with over 1,000 employees and either more than 50M turnover or 25M balance sheet must still report under CSRD and might decide to report under the Taxonomy, if they wish to claim alignment. This leaves a situation where contradictions in implementation will endure, and the cumulative costs of compliance remain a burden on European competitiveness.

Proposed Solutions

Co-legislators must prioritise avoiding misalignment of scopes across the three files[1]. This will bring consistency and reduce regulatory complexity for European companies, minimising the risk of confusion and regulatory fragmentation. To effectively prevent fragmentation during the transposition phase, it is also essential to ensure that the scope provisions are clearly defined and safeguarded against modifications by Member States. Without such safeguards, there is a risk that diverging national implementations could undermine legal certainty and the level playing field within the Single Market. The regulatory alignment of Taxonomy and CSRD frameworks will provide companies with a unified set of reporting standards, thereby reducing confusion and duplication of efforts. Moreover, clearer guidance on how the Taxonomy can complement CSRD requirements would help mitigate contradictions in implementation, fostering a more competitive business environment in Europe.

TRANSITION PLANS

Problem

Requirements on transition plans disclosure applicable to industry and businesses already exist in at least three other pieces of EU legislation (e.g., CSRD, IED[1], EU ETS[2]). It is paramount that consistency prevails in EU legislation on transition plans. A specific problem arises from the requirements in CS3D for the design of the transition plan (in Article 22, paragraph 1, subparagraph 2, points (a) to (d)), which differ from those corresponding requirements in the CSRD (that require a company to disclose if it does not have an ESRS specific transition plan for climate change mitigation in place and the presumption is to disclose that plan if it does). As it stands, the CS3D provisions will lead to additional complexity, unnecessary burden, and potentially unintended liability issues. It is essential that we reassess the added value of Article 22 in the CS3D without questioning the need for such a requirement in other EU laws.

The removal of the wording "putting into effect" from Article 22 (1) CS3D in practice does not have a substantive impact, as it has been replaced by a new requirement on companies to adopt "implementing actions". For this change to be meaningful, it must be clarified that the requirement to adopt implementing actions does not include an obligation to put the plan into effect/succeed in fulfilling the plan. The Omnibus proposal must not introduce a new concept that contains an implicit requirement to put the company's transition plan into effect.

Additionally, the wording "best efforts" in Paragraph 1 (Article 22) still imposes a high legal threshold on companies and creates legal uncertainty. Climate targets are addressed to states, not companies, which are not obliged to reach these targets individually but rather make efforts to accompany the trajectory towards those targets. It should be ensured that CS3D only comprises an obligation of means. Hence, consideration should be given to replacing "best efforts" with the wording "reasonable efforts".

Under 25(1) of the CS3D, national authorities are awarded powers to supervise not only the adoption, but also the design of the transition plans, creating potential conflicts with the CSRD, granting excessive powers to authorities to order companies to perform a specific action which can amount to a substantial interference in internal corporate management. The power of national authorities, combined with the wide legal standing given to stakeholders (without any specific requirements to establish a legitimate interest) in Article 26, could lead to legal uncertainty and even abuses.

Proposed Solutions

If Article 22 is maintained, it needs to be revised as follows to make sure it comprises only an obligation of means and achieves consistency with other EU legislation:

- The wording "implementing actions" in Article 22 (1) of the CS3D should be deleted, or it should be clarified that the adoption of implementing actions does not include an obligation to put the plan into effect.
- The provisions on the design of the transition plan in the CS3D (including the introductory sentence and points (a) to (d), second subparagraph, paragraph 1 of Article 22) should be deleted.
- No additional reporting elements should be added in the CS3D beyond CSRD, and only an explicit reference to disclosures under the CSRD should be maintained, if at all.
- Clarification in Article 25(1) and recital 73 is needed such that authorities can only supervise the adoption of a transition plan.

[1] Industrial Emissions Directive

[2] Emission Trading System

- The wording "best efforts" should be replaced with "reasonable efforts" in Article 1 (1), point (c) and 22 (1) of the CS3D to create an attainable and realistic standard of behavior for companies.
- A common template to comply with disclosure requirements foreseen in the different pieces of legislation could be considered.
- Clarification in future guidance that obligations regarding transition plans cannot go beyond the underlying science, market practice and applicable regulations in every jurisdiction in which companies operate.

3. CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE (CS3D)

HARMONISATION (ARTICLE 4)

Problem

The proposal only partially extends the coverage of the single market (harmonisation) clause to more articles of the Directive. However, it still falls short of ensuring uniformity and preventing fragmentation during the transposition phase, as several important provisions remain under minimum harmonisation.

Article 4(2) and Recital 31, which include language that directly contradicts the single market clause and even encourages Member States to add new rules during transposition, have not yet been changed. This keeps the legal loophole leading to fragmentation. There is also a substantial risk that even if all the changes proposed by the Omnibus are adopted, Member States will easily circumvent them. Effective corporate due diligence in Europe cannot be achieved with 27 different laws (or more if we include EEA countries); hence, ensuring a harmonised transposition of the rules by Member States is essential.

Proposed Solutions

- The single market clause should be extended to further key provisions of the Directive, for example: on scope, definitions, all due diligence obligations, powers of authorities, prioritisation, transition plans requirements and stakeholder involvement (including substantiated complaints in Article 26).
- Adopt an interinstitutional declaration committing to a pathway towards a more uniform due diligence framework inspired by the EP resolution on due diligence from 2023, containing an interinstitutional commitment on harmonisation.[3] The Commission and Member States should commit to coordinate during the transposition of this Directive and thereafter in view of a full level of harmonisation between Member States, in order to ensure a level playing field for companies and to prevent the fragmentation of the Single Market.

[3] https://www.europarl.europa.eu/doceo/document/TA-9-2023-0209_EN.html (see amendment 132, Article 3a (1) on the single market clause).

- Article 4(2) should be deleted, and the contradictory language in Recital 31 should be revised accordingly.
- Reconsider the necessity of Article 1(2), as it could constitute an implicit invitation for Member States to add new due diligence requirements.

SAFEGUARDING A RISK-BASED APPROACH IN TIER 1 AND BEYOND (ARTICLE 8)

Problem

The Omnibus proposal attempts to devise a system by which due diligence is mainly carried out on companies' own operations, their subsidiaries, and on direct business partners. However, the proposed wording creates unnecessary complexity (e.g., by adding new and ambiguous concepts) and seems to move away from the risk-based approach across the supply chain inspired by international standards, which enables companies to focus resources on the most severe impacts.

Mapping and identification of risks under Article 8(1) should continue to be a risk-based approach type of exercise for both the mapping and in-depth assessment regarding the due diligence activities, even with direct business partners (Tier 1). It should not mean mapping every chain of activity, identifying every single risk, nor checking every single entity, even where it concerns Tier 1 only. Moreover, applying due diligence to business partners already covered by the CS3D - who are subject to higher compliance standards - is a significantly different process (implies lower risks), as acknowledged in Recital 41 of the current CS3D text.

Prioritisation should be at the heart of risk identification/scoping, starting from the most severe and likely risks, and then determining exactly where those risks are and what the most appropriate measures are to address them. Considering that the new Article 8(1) seems to be inspired by the existing German supply chain law (LkSG), the well-known problems of implementation of the LkSG should be avoided, such as ambiguity of concepts and norms that lead German companies under the scope to conduct checks in every single direct business partner (in the case of some large European companies reaching up to 100 000 Tier-1 suppliers) which is counterproductive, inefficient and costly.

Legal clarity is necessary when it comes to hard legal requirements subject to sanctions and liability. For the proposed amendment to constitute real simplification and be aligned with the OECD guidelines, further adjustments are needed. Any obligations within the due diligence process must not go beyond the standard of "appropriate measures" as defined in Article 2 of the CS3D. The same applies to the obligation to seek contractual assurances, which, as drafted, appears to be a hard obligation in all circumstances, while the CS3D initially intended only to require contractual assurances "where relevant".

The new Article 8(2a) provides that in the case of "plausible information" - that suggests adverse impacts beyond Tier 1 - the company should conduct an in-depth assessment. This amounts to a Tier 1+ approach to due diligence (similar to the LkSG). We have reservations both on the introduction of the new concept of "plausible information" as well as on the consequences following such information. This concept is too vague, not linked to any internationally known standards, and could de facto render the amendment to paragraph 1 of Article 8 ineffective. The risk-based approach should also apply when there is a need to go beyond Tier 1, meaning that the focus should be on the most severe and salient risks, rather than every single risk, in the relevant parts of the chain of activities (e.g. relevant sector, product, service and/or specific geographical areas), and not at the level of every single indirect business partner linked to the company's activities.

Addressing the above issues would also have the benefit of preventing a disproportionate trickle-down effect on SMEs, which would potentially be on the receiving end (e.g., via a contractual route) of these disproportionate legal requirements.

Proposed Solutions

- Amend Article 8 to clarify that the risk-based approach also applies to the mapping of risk and in-depth assessments, even at the level of direct business partners.
- Avoid introducing new concepts such as ''plausible information''. If a specific concept to trigger going beyond Tier-1 is to be used, such a concept should not require an in-depth assessment on all indirect business partners, and the risk-based approach must continue to apply. As an alternative to the concept of "plausible information", inspiration can be found in the Forced Labor Regulation, pointing towards a precise, relevant, factual and verifiable information standard.
- The wording in Recital 41 of the current CS3D that alludes to lower risk factors when dealing with business partners under the CS3D scope should also be reflected in the articles of the future directive to avoid unnecessary burdens.
- Article 9(3) should be redrafted or deleted as it is not aligned with the OECD guidelines. Due diligence is not supposed to be conducted on every single risk in a company's chain of activities.
- Making sure the future guidelines will provide clear and simple guidance on what is needed/expected from companies when applying a risk-based approach.
- Commission and Member States to work together on tools to improve the information on countries and companies to address the known information gap when mapping risks beyond the EU borders, taking inspiration from the Forced Labor Regulation.

SUSPENSION OF BUSINESS RELATIONSHIPS (ARTICLES 10 AND 11)

Problem

We welcome the deletion of the provisions on termination of contracts. However, the remaining regime on suspension still raises important concerns and could lead to similar negative outcomes as forced termination. For example, when it cannot be ensured that the enhanced prevention action plan (foreseen in new Article 11(7) first subparagraph, point (b) and (7) second subparagraph) has a reasonable expectation of success because of third-state unwillingness to cooperate or a (third-state) law prohibiting such cooperation companies are placed in an impossible situation. The same applies when a company has no alternative to supply (essential goods, state or company monopoly). Furthermore, uncertainty can be caused by the absence of a time limitation for the forced suspension.

Due diligence is first and foremost about engaging and combining efforts to improve the situation on the ground, not to punish or to force disengagement. Ordering the suspension (sine die) of an existing business relationship and making companies liable for related adverse impacts, if they do not suspend it, is an example of a very intrusive measure. This could be damaging for EU companies' competitiveness (e.g. potential to disrupt supply of critical or strategic goods like rare earths or to disrupt operations involving components that need extensive testing or adaptation), for Europe's ability to access crucial raw materials for meeting its twin transition goals, especially in circumstances where there is no viable alternative, and would cause negative impacts in third-country local communities. To ensure the CS3D is truly interoperable with international standards, it should not include rules that simply lead to decoupling or a cut-and-run effect with no winners.

Proposed Solutions

- Delete the provisions on suspension of contracts.
- If provisions on suspension are to be kept, they need to be streamlined and rebalanced. More flexibility should be given to companies regarding the decision to suspend the contract, considering the specific circumstances: type of product, level and severity of the risk, market constraints, if only one supplier or one country supplies a certain product (single source), and negative effects of suspending on local communities and on the company itself. Some inspiration can be found in the Council General's approach of 2023.[4] Also, any provision regarding suspension should always be a last resort and temporary in nature, otherwise, it amounts to a de facto termination.

ADDRESSING THE DIRECTIVE'S OPEN NORMS

Problem

The Omnibus proposal has not addressed the excessively broad and potentially contradictory norms outlined in Annex I of the CS3D. These norms are contained in international instruments inherently addressed to (and meant to be applied by) states, and the majority of those cannot be automatically translated into obligations for companies (at least not without further guidance on their application).

Proposed Solutions

- Shorten and simplify obligations listed in Annex I.
- Recognise in the guidelines the flexibility of companies in how to factor in these open norms into their due diligence processes, assessing and tackling impacts in their chains of activities. It should also be clarified that a review by supervisory authorities or judges should be marginal, rather than a comprehensive, in-depth assessment (integral review). In other words, they should only check whether the company has complied with due diligence requirements, rather than scrutinising every detail of the company's actions or substituting their own judgment for the company's decisions. Considering the inherent flexibility needed to implement these processes and the likelihood that most situations will lack a clear path forward due to the need for interpretation to fit specific contexts, the supervisory authority should not always automatically sanction the company, rather, first provide notice or guidance where appropriate.

LIABILITY AND ENFORCEMENT

Problem

The Omnibus proposal states that the EU-wide liability regime has been removed in Article 29, including specific provisions on legal standing and the mandatory overriding effect of the EU law clause. Nevertheless, there are elements concerning liability that remained, such as rules on limitation periods, joint-and-several liability (paragraph 5) and disclosure of evidence (paragraph 3(e)). This does not align with the Omnibus approach to remove the harmonised EU Liability regime.

Regarding enforcement, we welcome the deletion of the turnover-based fine of 5% but believe there is still too much discretion given to authorities in Article 25. This, in combination with Article 7, the potential measures in Article 10(2)(c)(d) and 11(3)(d)(e), and the unrestrained standing given to stakeholders in Article 26, can lead to unforeseen outcomes and uncertainty. It can be interpreted that

[4] See the Council's general approach on CS3D, available at: https://data.consilium.europa.eu/doc/document/ST-15024-2022-REV-1/en/pdf, page 91.

authorities can order companies to perform a specific action to modify the company's business plan, overall strategies, operations, purchasing and distribution practices (e.g. related to adjustments or upgrades of facilities, production or other operational processes and infrastructures) which would amount to a disproportionate interference in the internal management of companies. It is essential that enforcement remains proportionate and focused. For example, each and every breach on its own should not automatically lead to a sanction, nor are authorities supposed to review and judge every detail of a company's due diligence plan and actions, including risk assessments, prioritisation, and mapping. Their role should rather be to review whether companies have a due diligence process in place, and they should rather have more marginal control over whether the company adopted a plan or followed a specific instruction of the authority.

Proposed Solutions

- Revise further Article 29 and remove the remaining EU liability regime features (e.g. rules on limitation periods, evidence and on joint and several liability).[2]
- Ensure a balanced approach to the powers of authorities, and introduce safeguards such as due process when authorities make decisions that interfere with internal company management.
- Add minimum criteria for any entity wishing to submit substantiated complaints according to Article 26.
- The future guidelines should also address these concerns.

DEFINING A NEW STARTING DATE FOR THE CS3D TRANSPOSITION DEADLINE

Problem

Sufficient time for transposition should be provided to Member States to properly implement the outcome of the Omnibus I, which covers many essential elements of the CS3D.

Proposed Solutions

To give Member States sufficient margin and provide companies with necessary predictability, consideration should be given to a two-year transposition period, starting only after the Omnibus I has been agreed and entered into force.

[1, 2] Mouvement des Entreprises de France (MEDEF) does not fully support this position.

4. CORPORATE SUSTAINABILITY REPORTING DIRECTIVE (CSRD)

AMBITIOUS REVISION OF ESRS SET 1

Problem

ESRS represent a large amount of ESG information to be collected and disclosed. Furthermore, many of these disclosures are not valuable either to the financial users of the CSRD reports or to businesses in terms of their transition activities. BusinessEurope welcomes the Omnibus announcement of a delegated act which will simplify ESRS Set 1. This is a very important exercise, which must absolutely reduce the burden on companies and make sure sustainability reporting focuses on high-quality, necessary data that covers the essentials. It must be done quickly, but not at the expense of quality, to provide legal certainty to companies in their sustainability reporting efforts and to avoid unnecessary investments.

Proposed Solutions

For the simplification exercise to have a meaningful impact in alleviating the burden on companies while benefitting stakeholders involved in the reporting process, the legal text of the first omnibus must:

- Significantly reduce the final number of datapoints and corporate work efforts, while ensuring the value of the reported data for actual decision making.
- Ensure practitioners, and financial users have a central role in the current simplification of set 1 ESRS, as well as in future targeted revisions of the delegated act.
- To avoid being confronted in the future with the same problem, CSRD article 29 (2) and (3) should clearly indicate more guiding principles for the standards and in particular:
    - Avoid a broad or expansive interpretation of the Directive, i.e., Standards should only be drafted for topics explicitly referenced in the CSRD.
    - Avoid imposing disproportionate costs on undertakings.
    - Avoid excessive granularity of information.
    - Avoid requesting data for which good quality and reliability of the information cannot be guaranteed (i.e., estimations should be requested only when based on sound methodologies).
    - Provide some flexibility for the undertaking to omit information when it is subject to legal limitations, unavailable or incomplete.
    - Ensure interoperability with global sustainability standards and frameworks to facilitate compliance.
- Strengthen CSRD's provision that allows undertakings not to disclose sensitive information (article 19a (3)), by committing to eliminating business-sensitive disclosure requirements, as they pose a threat for European companies' competitiveness compared to their third-country counterparts (e.g., disclosures on anticipated financial effects, or breakdown of employees by country).

AUDITING ACTIVITIES

Problem

Experience from the first year of reporting reveals significant variation in the level of detail adopted by auditors across different Member States, with some being particularly stringent and others more tolerant. From a European perspective, it is paramount to guarantee a harmonised approach in conducting auditing activities to guarantee equality of the process for all companies involved.

Additionally, current assurance processes are more focused on compliance rather than the relevance of reporting. One of the main cost drivers is the requirement to provide assurance on the double materiality process. While BusinessEurope supports the principle of double materiality, its associated assurance process often promotes a compliance-oriented reporting, rather than encouraging the disclosure of meaningful and decision-useful information. The wording in Accounting Directive Article 34(1) (aa) emphasises compliance with sustainability reporting requirements, leading to a mechanical approach rather than a focus on content and relevance. The absence of references to the relevance of information when performing a limited assurance has driven up costs and compliance burdens instead of supporting high-quality, relevant sustainability reporting[5].

Proposed Solutions

BusinessEurope requests an EU auditing standard for limited assurance to be developed as soon as possible, ensuring audit requirements are proportionate and harmonized across Member States. In addition, the standard must explicitly confirm the voluntary nature of all guidance developed by EFRAG and clarify that it must not be treated as legally binding by auditors. BusinessEurope calls on the October 2026 deadline to develop this standard to be reintroduced.

Additionally, to reduce auditing costs, BusinessEurope proposes to better define the details and scoping of the limited assurance mission. Since assurance requirements are embedded in the CSRD/ Accounting Directive, the following level 1 adjustments are needed:

- Amend Article 34(1) (aa) to divide audit requirements between:
    - Historical data (metrics) covered by the limited assurance opinion.
    - Strategy, business model, policies, activities, goals, and future expectations, which should be subject to a consistency check, in line with the Accounting Directive.
- Ensure that the assurance opinion on the double materiality process does not lead to a rigid checklist approach and excessive documentation requirements and clarify that it is not necessary to perform a full re-assessment of the double materiality on a yearly basis if facts and circumstances do not change.
- Adjust the wording and scope of the auditor's role to avoid any ticking-the-box approach, enabling to better focus the sustainability report's elaboration and verification on the most relevant aspects as assessed by the management.

[5] According to the Commission Staff working document accompanying Omnibus I package, assurance costs, including internal costs, make up about two-thirds of total CSRD costs.

EXEMPTION IN THE FRAMEWORK OF THE CONSOLIDATED SUSTAINABILITY REPORTING FOR FINANCIAL HOLDING COMPANIES

Problem

Under the current framework of the CSRD, the unique features of Financial Holding companies are not recognised. The distinct business includes not having operational management over their investees. CSRD and ESRS do not reflect this fact, hence failing to recognise the difference between having daily, operational management of a company and being an investor without direct management. This may result in irrelevant, or even misleading, sustainability reporting on the part of Financial Holding companies because of the requirement, for instance, to mechanically follow financial consolidation principles. When the "parent company" is a purely financial holding company (as defined in art. 2(15) of the Accounting Directive)), the requirement of the publication of the consolidated sustainability report by those entities creates unnecessary burdens on companies, as it does not satisfy any external disclosure interests, nor it corresponds to a real power to define the group policy.

Proposed Solutions

To avoid undue burdens and the risk of discouraging international investors from investing in EU companies, purely financial holding companies, both European and foreign ones, should be excluded from the CSRD.

EXEMPTION OF LISTED SUBSIDIARIES INCLUDED IN THE (OPERATIONAL) PARENT COMPANY'S SUSTAINABILITY REPORT

Problem

Under the current framework of the CSRD, subsidiaries exceeding the Directive's reporting thresholds can be exempt from their own sustainability reporting obligations, if their parent company includes their data in its consolidated sustainability report, except when the subsidiary is a large, listed company. This results in two distinct regimes for subsidiaries within the same group: listed subsidiaries are required to publish their own sustainability reports, while unlisted subsidiaries are exempt.

Proposed Solutions

BusinessEurope recommends extending this exemption to all subsidiaries, including large, listed companies, provided an operational holding company is at the top (see point above). This would eliminate the need for separate sustainability reports, reducing redundancy and unnecessary administrative burden.

It follows logically that undertakings, which are subsidiaries of an Investment Holding company no longer required to consolidate, will now need to do their individual or group report if they meet the thresholds.

SCOPE FOR EU SUBSIDIARIES OF NON-EU COMPANIES

Problem

While Omnibus I proposes to amend the scope of the CSRD for some companies, it overlooks the situation of subsidiaries of non-EU companies, creating legal inconsistencies. Presently, subsidiaries of non-EU companies with 250 or more employees would be obliged to comply with the CSRD, while European companies would only be in scope from 1,000 employees or more.

Proposed Solutions

The scope of the CSRD should be amended to address this legal inconsistency, ensuring that subsidiaries of non-EU companies are required to report in line with the thresholds outlined in this paper (see Cross-Cutting Issues section). This would ensure consistency, certainty, and a level playing field.

5. EU TAXONOMY

MATERIALITY THRESHOLDS/OPEX THRESHOLDS

Problem

A materiality threshold of 10% for all corporate KPIs is introduced but the Delegated Regulation still includes the reporting requirements of non-material activities at aggregated and individual levels to provide investors and the public with a complete overview of non-material activities, which is not where the main focus of investors lies, overloading companies with the task of providing non-essential data with potential sensitivity issues. Also, applying the threshold is still burdensome as entities are likely to be required by their auditors to present measures of turnover, Capex and Opex for the activities for which they claim non-materiality. For entities with several activities under the threshold that on a cumulative basis reach the threshold, it may also be difficult to determine which activities may be omitted from the assessment of compliance with the technical screening criteria.

Proposed Solutions

Investors' primary focus lies on material activities and the EU taxonomy report should prioritise material information to avoid overloading with irrelevant data. Therefore, BusinessEurope recommends dispensing with the disclosure of non-material activities or requiring the qualitative listing in narrative only of non-material information/economic activities, without any further information. We also recommend removing requirements to disclose financial information, which is classified as sensitive.

Furthermore, BusinessEurope interprets the proposal to mean that the thresholds are to be applied cumulatively, requiring the total amount across all activities that an entity reports as non-material to remain below 10% for a specific KPI. This approach could render the thresholds ineffective. Therefore, we request a clear statement confirming that the thresholds should be applied individually to each activity. The Commission should also consider increasing the threshold to 20%. Alternatively, a more principles-based approach to materiality could be adopted. Such an approach would allow for flexibility as to how entities demonstrate non-materiality, allowing preparers to take a quantitative or qualitative approach to materiality. This would also allow them to omit on strategic or ''economic activity'' grounds support activities (such as buildings, digital, transportation) that are tangential to the primary business activities for which an entity might be seeking green financing, and in which the main focus and effort of achieving alignment will be made. These activities are frequently dispersed across multiple sites and not easily available in accounting systems, as they are non-strategic in nature and so are a disproportionately difficult element to collect. This endorses formally the approach taken by many preparers today to explicitly exclude such support activities.

BusinessEurope also urge policymakers to introduce the complete conversion of Opex to voluntary. The proposal introduces a certain degree of flexibility for non-financial undertakings by foreseeing

mandatory reporting of Opex only for those activities where the cumulative turnover resulting from them exceed 25% of their total turnover, but the use of the ''cumulative'' adjective in connection with ''related economic activities'' can be subject to various readings so further flexibility would create a better streamlined proposal.

REPORTING TEMPLATES

Problem

The reporting templates for Taxonomy alignment of companies have been simplified but the unnecessary duplication of reporting obligations remains and there is additional room for simplification of the qualitative disclosures that shall accompany the templates (paragraph 1.2 in Annex I of the disclosures delegated act) considering that the disclosures are quite extensive, and the information contribute little to the achievement of the overall aim of the Taxonomy. There is also a need for further improvements related to the Capex KPI.

Proposed Solutions

BusinessEurope appreciates the reduction of data points in reporting templates, especially the columns presenting the results of the minimum safeguards and DNSH assessment per environmental objective. The introduction of one static template for summary information by the Delegated Regulation, which merges the summary of KPIs into one template instead of three, is a positive change. However, Annex I amending Annex II requires non-financial undertakings to duplicate the summary template for turnover, Capex, and Opex, resulting in three summary templates and three templates per activity. This duplication should be avoided as both templates have overlapping data points, such as the total aligned proportion. BusinessEurope therefore recommends creating one single template per KPI that includes all relevant information.

As regards partial alignment, it is unclear how ''partial alignment'' could be simply captured in the revised tables, so there is a real risk that complexity is reintroduced in showing which activities are partially aligned. In any case, partial alignment reporting must remain optional at preparers' discretion for all entities.

Furthermore, BusinessEurope is concerned that the requirements of "multiple contribution" assessment would not bring about the intended simplification but would rather lead to confusion. For these reasons, BusinessEurope would recommend integrating a "single path" approach in the table, i.e. remove "multiple contribution" reporting requirements, to improve clarity and reduce both the calculation/assessment and the reporting efforts. It shall be noted that financial companies do not use this disclosure either, so this removal would have no negative repercussion.

The draft Delegated Act still includes the descriptive columns "enabling" and "transitional". BusinessEurope recommends deleting these two columns as superfluous: an activity cannot be enabling and transitional at the same time, and its ''description'' is already provided in the regulatory description of the activity. This would improve the readability of the Taxonomy tables while not undermining the ambition or comparability of companies' disclosure.

BusinessEurope also suggest removing "minimum safeguards" provisions without a binding, uniform verification or compliance mechanism, as an alignment criterion. It is adequately covered elsewhere in entity reporting (CSRD and existing reporting) and governance (including CS3D) and so need not be further reiterated in the taxonomy.

The "guiding documents" from the Platform for Sustainable Finance and the Commission, which include cross-references and non-binding rules, are ineffective for practical implementation. If retained, a blanket statement cross-referencing to other reporting for the entity as a whole should be allowed, rather than an activity-by-activity approach to testing alignment.

Regarding the Capex KPI, to increase comparability and transparency, companies should be allowed to apply the same Capex definition for Taxonomy reporting purposes as they use in their financial reporting (IFRS). This will avoid different references/definitions in corporate disclosures in the annual management report and remove the obligation to establish a correspondence table between the financial Capex and the Taxonomy Capex definition. And lastly, the obligation on companies to link aligned Capex and aligned revenues to green bond issued by the company should be removed as this is very challenging in practice. In line with best practices (including ICMA Principles) and as per the gradual approach under article 4 of the EU Green Bond Regulation, companies have several months following the issuance of the green financing instrument to allocate the proceeds/ funds to green eligible projects, or to refinance them if necessary, while the Capex KPI under the Taxonomy is calculated on investments made over the current period. Therefore, it's very complex to link Taxonomy aligned Capex with green bond allocations due to the timing mismatch. This can also be caused by the look-back period, i.e. green bonds proceeds may be allocated to Capex that were disbursed up to 2 years prior to the issuance of the green bond.

DO NOT SIGNIFICANTLY HARM (DNSH)

Proposed Solutions

BusinessEurope welcomes the proposed improvements. Appendix C has raised several challenges, incl. in terms of usability and proportionality, preventing companies from disclosing activities for the green transition as "Taxonomy aligned". To further simplify requirements, the European Commission should introduce a mechanism allowing for automatic compliance with the Do No Significant Harm (DNSH) principle in case of application of relevant EU legislation. Aligning DNSH criteria with existing EU legislation would improve the usability of the criteria while adhering to Art. 17 of the Taxonomy Regulation. In addition, the Commission should work on harmonising substances in scope of both Appendix C and CSRD to ensure consistent assessments, comparability and reporting requirements. This should be possible by making the European Sustainability Reporting Standards (ESRS) definition at a manageable level.

BusinessEurope also suggests assessing further opportunities to simplify the substantial contribution & DNSH assessment beyond Appendix C, such as the phasing in of the EU Taxonomy reporting application, as not all economic activities are included, and consequently sectors may report low eligibility percentage which renders the reporting often as not very useful. In addition, the current text in Appendix C prevents alignment of economic activities that fulfil both the substantial contribution and the DNSH criteria but require the involvement of restricted substances during the manufacturing process that are not present in the final product nor in contact with it (e.g., intermediates, substances required for fuel/combustion, etc.).

As regards the two options, one removing paragraph after f) (option 1) and another referring to the harmonized classification (Part 3) of the CLP Regulation (option 2), BusinessEurope has a preference for option 1, due to the challenges raised by this paragraph as well as paragraph f) itself: the two paragraphs refer to "suitable alternative substances or technologies" and their use is made "under controlled conditions". Manufacturers do not have sufficient information on the presence or alternatives of substances in components or alternatives of substances in components and parts received from their suppliers. The procedure for evaluating and communicating alternatives rather comes via other REACH processes (including Authorisation List in Annex XIV, public consultations, evaluation of exemptions in Annex XVII). Although option 2 provides legal clarity as to the substances to be evaluated, this option does not address the transparency challenges indicated above. For these reasons, BusinessEurope would recommend pursuing option 1.

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