

EuropeanIssuers' Position Paper on the European Commission's Proposal for a Corporate Sustainability Reporting Directive (CSRD)

14 July 2021

I. Foreword

EuropeanIssuers welcomes the Commission's initiative on sustainability reporting and its primary goal of having a clearer and more coherent reporting framework within the EU. In this light, we share the ideal aim of the proposed Directive namely to enhance transparency and promote sustainable investments. Clear ESG reporting standards for companies are necessary to ensure that reliable, comparable, and relevant information is disclosed.

Nonetheless, EuropeanIssuers is concerned about the approach taken by the proposed Directive on Corporate Sustainability Reporting, as it would define a framework that, on one side, appears too prescriptive and, on the other side, does not consider adequately the competitive issues that EU companies could face on international level, as well as the risks of high financial and administrative costs for companies, in particular nowadays, facing relevant recapitalisation issues that are of utmost importance to support the recovery during and after the Covid19 pandemic. For this purpose, EI would like to propose some reflections and considerations on some of the points presented by this proposal that cause concerns among the issuers' community across Europe.

II. Specific comments

- EuropeanIssuers believes that the **proposed extension of the scope** of sustainability reporting obligations raises some major concerns.
 - The first one is the extension of the provisions to **SMEs listed on regulated markets**. In our view, the huge **financial and administrative costs**¹ needed to implement the new requirements is **disproportionate to any SME, listed or not**, as the SME definition covers very **small companies** (i.e. companies exceeding two of those three criteria: employees 10, net turnover 350.000; balance sheet 700. 000).² In a report dated June 2020, the High-Level Forum for the Capital Market Union proposed to broaden the scope of small and medium sized companies to all publicly listed companies in any type of market where market capitalisation is lower than one billion euros. This threshold should apply to companies irrespective of the market they are

¹ This issue was already pointed out as one of the worst consequences of the "Set up a mandatory EU standard" in the analysis of the policy options under the original NFRD Impact Assessment. (Please see page 5 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013SC0128&from=DE>).

² The report "EMPOWERING EU CAPITAL MARKETS - Making listing cool again" on page 18 supports the recommendation of the CMU HLF of page 66 of Definition for Small and Medium Capitalisation Companies (SMCs): an SMC should be defined as "all publicly listed companies on any type of market whose market capitalisation is lower than one billion."

traded on. In this regard, it is worth mentioning that one of the main arguments for the introduction of the Non-Financial Reporting information obligation under the NFRD was the “proportionality” of the administrative burden and the subjective scope.³ As the CSRD’s Impact assessment rightly recognised, “the economic crisis generated by the pandemic makes it **ever more important to avoid the imposition of unnecessary administrative costs on business**”.⁴

Moreover, **there is no justification** for that extension as **there is no correlation between the “listing status”** and the companies’ impact on ESG or ESG’s impact on companies.

In addition, this extension would be **an additional burden to access capital markets**⁵, running counter the objective of Capital markets Union, in a period in which the **recapitalisation of companies**, also through capital markets, is of utmost importance to support the recovery.

Therefore, we believe that **SMEs listed on regulated market** - as all the other SMEs - **should be exempted** from the mandatory discipline of the CSRD.

As an alternative, **we suggest that the proposal could allow listed SMEs to voluntarily opt for the preparation of the CSR, using simplified reporting standards**. This possibility could enhance the potential value of the sustainability reporting instrument also for SMEs as an element of attractiveness to the market.⁶

- The second issue of concern is related to the **extension to all large companies**. In our view, it should be considered that the scope of CSRD will be extended to companies that did not have reporting obligation on non-financial issues under NFRD and therefore, they will be reporting on those issues for the first time. In this light, but also considering that companies in the very next year will need to focus on reorganising and restarting their business, it would be appropriate to **envisage a regime of progressive application for large companies having more than 250 and less than 500 employees**. Those firms should be required to apply the new framework from January 1, 2026 (i.e. at least 3 years after the entry into force of the Directive for large companies).
- Third, the Directive should be extended to all **non-listed non-EU companies exceeding a certain threshold of global turnover** to be determined and **offering goods or services in the EU**. Many competitors of EU companies are non-listed in the EU and do not necessarily fulfil the criteria of a large company because they operate for example from third countries such as Switzerland or the United Kingdom, from

³ Please see page 7 of the NFRD Proposal) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013PC0207&from=EN>

⁴ See page 2 of the IA of CSRD: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021SC0150&from=EN>

⁵ The TESG in its report published in May 2021 concluded that the listing process and ongoing requirements for listed SMEs have become excessively burdensome over time.

See, [Final report of the Technical Expert Stakeholder Group \(TESG\) on SMEs - Empowering EU capital markets - Making listing cool again \(europa.eu\)](https://www.europa.eu/press-room/media/30444)

⁶ The TESG in its reports already recommends to introduce a tailored and voluntary framework for SMCs in the NFRD review with a proportionate and clearly set of KPIs. The TESG recommends to co-legislators to depart from the Commission’s proposal on CSRD, by making disclosure requirements non-mandatory for SMCs listed on RMs (Page 53 of the Report).

digital platforms or through branch offices. These competitors should nevertheless be subject to the same reporting obligations on sustainability irrespective as to whether they are established within the EU. Otherwise, EU companies are likely to be exposed to unfair competition and social or environmental dumping. From a legal point of view, there are numerous EU regulations that already apply to non-EU companies, such as Regulation 679/2016/EU on data protection, or Directive 828/2017/EU on the encouragement of long-term shareholder engagement.⁷

- The **principle of both financial and non-financial materiality** should be clearly referred to as the guiding principle for corporate disclosure on non-financial issues in order to avoid box-ticking and information overkill. The necessary flexibility allowing each company to define its own material issues may be counterbalanced by increased **transparency on the methodologies** applied by companies to define which environmental or social issues are considered material. However, the obligation to produce a negative statement explaining why certain issues are considered as not material, is unacceptable for EuropeanIssuers because it would lead to a huge additional burden and box-ticking exercise without added value.
- **With regards to the location of the sustainability information/reporting**, according to the proposal it must be included in the management report. This new approach introduces limitations on how to present the sustainability information compared to the NFRD which established that the non-financial information can be included in the management report, or in a separate report. Currently, most enterprises opt for a separate report.

The EC impact assessment explains that the mandatory publication of the sustainability reporting within the management report is justified for certain reasons. We do not share this view, inasmuch the availability, findability and accessibility of the sustainability information could be ensured in a more simple and flexible way, introducing **requirements on preparation, disclosure and review of the separate report**, consistent with the management report.

For example, the supposed difficulty in finding ESG information can be solved imposing an **adequate disclosure regime**. Moreover, this problem could be even less relevant for listed companies, as the project on the **European single access point** for information (so-called ESAP) should cover at least all the information contained in Directive 2013/34.

Similarly, the argument that the inclusion of this information in the management report **promotes greater integration of accounting information with sustainability information** is not entirely well-founded, as in the absence of precise and uniform rules on the content of the management report, the inclusion of sustainability information in the management report is a **mere mechanical inclusion** of information on sustainability.

⁷ Numerous other pieces of EU legislation with an extended territorial scope of application can be mentioned, such as Directive 2012/19/EU on waste electrical and electronic equipment; Directive 2011/61/EU on Alternative Investment Fund Managers; Timber Regulation 995/2010/EU; Directive 2008/101/EC including aviation activities in ETS; Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements; Regulation (EC) No 391/2009 on common rules and standards for ship inspection and survey organisations; ...

However, in our view, the real issue is that, **at this stage, a clear-cut choice is premature**, in the light of the much broader thinking on what the comprehensive re-organization of all periodical information (financial, ESG, strategic) should be. Nowadays, we can recognise two approaches: the first one moves towards a unified document (this seems to be the direction followed by the European Commission) and a second one moves towards the creation of a “network” of documents (this seems to be the direction followed by the United Kingdom⁸).

Based on these considerations, in our view, for the time being, **the Directive should allow flexibility on the location** of sustainability information and companies should be able to choose whether to include the CSR in the annual report or in a separate document, whose **requirements on preparation, disclosure and review will be consistent with the management report**.

- **As for reporting standards**, the proposed Directive sets out in general terms the information to be provided, referring for further specification to the reporting standards to be adopted by the European Commission. These standards will define in detail the information to be reported and, where relevant, the format to be used.

EuropeanIssuers believes that this approach raises the following concerns:

- *Specification of the content of the information*
The first one is that the concrete content of the information to be provided for by companies is **delegated to the European Commission without a clear indication on the possible extent** of the further specifications and KPIs imposed on companies.
- *Flexibility in the application of standards*
The second issue concerns the **obligation of companies to follow the standards adopted by the EC** although they may be operating worldwide.
- *Standards implementation timetable*
Under the CSRD proposal, the new standards would apply for the first time to the reports released in 2024, this timeline seems too short to deliver the high quality expected from the future EU standard. Considering the complexity of the standardisation work, quality should be prioritised over speed.
Moreover, article 8 of the Taxonomy regulation requirements may enter into force as from 2022 and apply to financial year 2021. We are concerned about the waste of time and resources to adapt to a new reporting that will be changed 2 years later. Therefore, we think that the application of article 8 of taxonomy should be aligned to the implementation of EU standard.

Regarding the delegated acts, Art. 19b point 3a) of the CSRD proposal specifies that the Commission shall “take into account the work of global standard-setting initiatives for sustainability reporting”. This formulation is not sufficient. EuropeanIssuers demands that the

⁸ FRC, Discussion paper on the future of corporate reporting, 2020.

future European standard converges with the main international - ongoing or future - **initiatives to avoid multiple and competing mandatory reporting measures** that would apply to international companies operating simultaneously in different major jurisdictions.

For example, the **preparatory work of EFRAG should be aligned with the future international standard on climate related reporting announced by the IFRS Foundation** and backed by the G7. It should also aim at bridging the gap between diverging international and EU approaches, for example on materiality. Therefore, the **Commission and EFRAG must pursue a close collaboration with international players** in order to guarantee a high level of influence of the EU in the development of a global ESG reporting standard.

In the meantime, the **European Sustainability Reporting Standard should not be too rigid to avoid putting EU companies at an entirely different footing than their US and Chinese competitors**. EU companies operating in an international context might need to use standards different from the European ones and **cumulative effects of diverging reporting obligations should be avoided**.

It would therefore be preferable, awaiting the outcome of convergence between EU and international standards, that **European companies could opt, with adequate justification, for approved international standards** (GRI, SASB) recognized as equivalent at European level through a special procedure (similar to the procedure applying to non-EU companies).

- On **information content**, EuropeanIssuers believes that the wording of the proposal is very general, and it is difficult to assess the potential impact of the required information. Moreover, some of the required information (e.g. due diligence, supply chain, targets ...) assumes obligations linked to measures not yet adopted.⁹ Therefore, it would be more reasonable, first, to set out the essential obligations and then, to outline any reporting profiles.

Another concern is related to information on **sustainability targets** and **forward-looking** information. Depending on the **degree of detail** of that information, it could involve disclosing **confidential strategic positioning** of the company. Finally, if the forward-looking information implies information on the **scenario analysis**, this will raise problems for the assurance of the assumptions on which the prospective information is based.

Information on **intangibles** is also a particularly sensitive issue. Although intangibles play an increasingly significant role in modern business, it is difficult to identify and measure them because there are no commonly acknowledged methodologies. Interdependencies and trade-offs are so complex that credible and **reliable disclosure is too difficult to achieve at this stage**. This explains the ban on accounting for internally generated intangibles in the financial sphere. Moreover, the link between disclosure of intangibles and sustainability factors is not sufficiently clear.

⁹ See Action 10 of the Sustainable Finance Plan.

We therefore propose that **information on intangibles should be purely qualitative and not quantitative**, and only published when it is material.

- **With regards to the digitalisation of sustainability reporting**, the requirements of the CSRD proposal **should be clarified to avoid undue burden for preparers**. As of today, companies – depending on whether the relevant Member State has decided to exert the option to implement or postpone implementation of the ESEF – are required to publish financial annual reports including management reports in the ESEF but the **tagging of data using the XBRL format only applies to the primary financial statements established in accordance with the IFRS**. Consistency between the digitalisation of financial and non-financial reporting should be ensured, meaning that **only quantitative data should be marked up in XBRL**.
- Finally, with regards to **assurance of sustainability reporting**, the proposal introduces mandatory assurance of sustainability information to the level of «limited assurance». However, recital 53 states that the ultimate goal of assurance is to have a similar level of assurance for financial and non-financial information. Art. 3 (12) amending Directive 2006/43/EC gives the Commission the **power to adopt standards based on a reasonable assurance engagement**. Companies consider that **this rapid evolution towards reasonable assurance is premature**, considering that solid accounting standards were not built overnight. In this regard, sustainability reporting standards need to be developed, implemented and proof tested. Therefore recital 53 and Art. 3 (12) point 3 should be deleted to avoid any automatism toward a reasonable assurance.

The proposal **allows Member States to authorise** independent assurance services providers other than statutory auditors or audit firms to carry out the assurance of sustainability reporting.

To avoid restricting the market for this kind of service and to ensure alignment to EU freedom to provide services, States **should be obliged to authorise that the assurance of sustainability reporting could be provided not only by the auditor but also by an independent service provider**.

EuropeanIssuers is a pan-European organisation representing the interests of publicly quoted companies across Europe to the EU Institutions. Our members include both national associations and companies from all sectors in 14 European countries, covering markets worth € 7.6 trillion market capitalisation with approximately 8000 companies.

We aim to ensure that EU policy creates an environment in which companies can raise capital through the public markets and can deliver growth over the longer-term. We seek capital markets that serve the interests of their end users, including issuers.

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