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#### COVER NOTE

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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	22 April 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 189 final
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting

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Delegations will find attached document COM(2021) 189 final.

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Encl.: COM(2021) 189 final



Brussels, 21.4.2021  
COM(2021) 189 final

2021/0104 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and**  
**Regulation (EU) No 537/2014, as regards corporate sustainability reporting**

(Text with EEA relevance)

{SEC(2021) 164 final} - {SWD(2021) 150 final} - {SWD(2021) 151 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

The Non-Financial Reporting Directive (Directive 2014/95/EU, the NFRD), amending the Accounting Directive, was adopted in 2014.<sup>1</sup> Companies within the scope of the NFRD had to report in accordance with its provisions for the first time in 2018 (covering financial year 2017).

The NFRD applies to large public-interest entities with an average number of employees in excess of 500, and to public-interest entities that are parent companies of a large group with an average number of employees in excess of 500 on a consolidated basis.<sup>2</sup> The NFRD exempts subsidiaries from its reporting obligations if their parent company does the reporting for the whole group, including the subsidiaries. Approximately 11 700 companies are subject to the reporting requirements of the NFRD<sup>3</sup>.

The NFRD introduced a requirement for companies to report both on how sustainability issues affect their performance, position and development (the ‘outside-in’ perspective), and on their impact on people and the environment (the ‘inside-out’ perspective). This is often known as ‘double materiality’.

In accordance with the NFRD, in 2017 the Commission published non-binding reporting guidelines for companies.<sup>4</sup> In 2019, it published additional guidelines, on reporting climate-related information.<sup>5</sup> These guidelines have not sufficiently improved the quality of information companies disclose pursuant to the NFRD.

The European Commission committed itself to proposing a revision of the Non-Financial Reporting Directive in the European Green Deal and its 2020 Work Programme.<sup>6</sup> The European Green Deal aims to transform the EU into a modern, resource-efficient and competitive economy with no net emissions of greenhouse gases by 2050.<sup>7</sup> It will decouple economic growth from resource use, and ensure that all EU regions and citizens participate in a socially just transition to a sustainable economic system. It also aims to protect, conserve and enhance the EU's natural capital, and to protect the health and well-being of citizens from environment-related risks and impacts. The revision of the NFRD will contribute to the objective of building an economy that works for people. It will strengthen the EU's social

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<sup>1</sup> Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

<sup>2</sup> Public-interest entities are defined in the Accounting Directive as companies with securities listed in EU regulated markets, banks (whether listed or not), insurance companies (whether listed or not) and any other companies designated by Member States.

<sup>3</sup> This figure takes account of how Member States have transposed the Directive. Not taking account of national transposition, about 2 000 companies are within the scope of the NFRD.

<sup>4</sup> Commission Communication C(2017) 4234 final.

<sup>5</sup> Commission Communication C(2019) 4490 final.

<sup>6</sup> Communication from the Commission on the European Green Deal, COM(2019)640 final. Adjusted Commission Work Programme 2020 COM(2020) 440 final.

<sup>7</sup> On 4 March 2020, the Commission adopted the Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law) (2020/0036 (COD)), proposing to make the objective of climate neutrality by 2050 legally binding on the EU.

market economy, helping to ensure that it is future-ready and that it delivers stability, jobs, growth and investment. These goals are especially important considering the socio-economic damage caused by the COVID-19 pandemic and the need for a sustainable, inclusive and fair recovery.

In line with the Commission's Sustainable Finance Action Plan, the EU has taken a number of measures to ensure that the financial sector plays a significant part in achieving the objectives of the European Green Deal<sup>8</sup>. Better data from companies about the sustainability risks they are exposed to, and their own impact on people and the environment, is essential for the successful implementation of the European Green Deal and the Sustainable Finance Action Plan. By making companies more accountable for and transparent about their impact on people and the environment, this proposal can also help strengthen relations between business and society. It will also create opportunities for companies, investors, civil society and other stakeholders to radically improve the way sustainability information is reported and used thanks to digital technologies. In December 2019, in its conclusions on the Capital Markets Union, the Council stressed the importance of reliable, comparable and relevant information on sustainability risks, opportunities and impacts, and called on the Commission to consider the development of a European non-financial reporting standard<sup>9</sup>.

In its May 2018 resolution on sustainable finance, the European Parliament called for the further development of reporting requirements in the framework of the Non-Financial Reporting Directive (NFRD).<sup>10</sup> In its December 2020 resolution on sustainable corporate governance, it welcomed the Commission's commitment to reviewing the NFRD, called for an extension of the scope of the NFRD to additional categories of companies, and welcomed the Commission's commitment to developing EU non-financial reporting standards<sup>11</sup>. The European Parliament also considered that non-financial information published by companies pursuant to the NFRD should be subject to a mandatory audit.

The primary users of sustainability information disclosed in companies' annual reports are investors and non-governmental organisations, social partners and other stakeholders. Investors, including asset managers, want to better understand the risks of, and opportunities afforded by, sustainability issues for their investments, as well as the impacts of those investments on people and the environment. Non-governmental organisations, social partners and other stakeholders want to hold undertakings to greater account for their impacts of their activities on people and the environment.

The current legal framework does not ensure that the information needs of these users are met. This is because some companies from which users want sustainability information do not report such information, while many that do report sustainability information do not report all the information that is relevant for users. When information is reported, it is often neither sufficiently reliable, nor sufficiently comparable, between companies. The information is often difficult for users to find and is rarely available in a machine-readable digital format. Information on intangibles, including internally generated intangibles, is under-reported, even though these intangibles represent the majority of private sector investment in advanced

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<sup>8</sup> Communication from the Commission – Action Plan: Financing Sustainable Growth, COM(2018)097 final.

<sup>9</sup> Council Conclusions on the Deepening of the Capital Markets Union (5 December 2019).

<sup>10</sup> European Parliament resolution of 29 May 2018 on sustainable finance (2018/2007(INI)).

<sup>11</sup> European Parliament resolution of 17 December 2020 on sustainable corporate governance (2020/2137(INI)).

economies (e.g. human capital, brand, and intellectual property and intangibles related to research and development).

The information needs of users have increased significantly in recent years and will almost certainly continue to do so. There are several reasons for this. One is the growing awareness of investors that sustainability issues can put the financial performance of companies at risk. Another is the growing market for investment products that explicitly seek to conform to certain sustainability standards or achieve certain sustainability objectives. Yet another is regulation, including the Sustainable Finance Disclosure Regulation and the Taxonomy Regulation. As a result of both these regulations, asset managers and financial advisers need more sustainability information from investee companies<sup>12</sup>. Finally, the COVID-19 pandemic is likely to further accelerate the growth in demand for sustainability information from companies, for example regarding the vulnerability of workers and the resilience of supply chains.

There is therefore a widening gap between the sustainability information companies report and the needs of the intended users of that information. On the one hand, this means that investors are unable to take sufficient account of sustainability-related risks in their investment decisions. This in turn has the potential to create systemic risks that threaten financial stability. On the other hand, the gap means that investors cannot channel financial resources to companies with sustainable business models and activities. This in turn undermines the achievement of the objectives of the European Green Deal. It also hampers stakeholders' ability to hold undertakings accountable for the impact they have on people and the environment, creating an accountability deficit liable to undermine the efficient functioning of the social market economy.

The current situation is also problematic for companies that have to report. The lack of precision in the current requirements, and the large number of private standards and frameworks in existence, make it difficult for companies to know exactly what information they should report. They often experience difficulties in getting the information they themselves need from suppliers, clients and investee companies. Many companies receive requests for sustainability information from stakeholders in addition to the information they report to comply with current legal requirements. All of this generates unnecessary business costs.

The objective of this proposal is therefore to improve sustainability reporting at the least possible cost, in order to better harness the potential of the European single market to contribute to the transition towards a fully sustainable and inclusive economic and financial system in accordance with the European Green Deal and the UN Sustainable Development Goals.

The proposal aims to ensure that there is adequate publicly available information about the risks that sustainability issues present for companies, and the impacts of companies themselves on people and the environment. This means that companies from which users need sustainability information should report such information, and that companies should report all information users consider relevant. Reported information should be comparable, reliable and easy for users to find and make use of with digital technologies. This entails changing the

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<sup>12</sup> Regulation (EU) 2019/2088 (Sustainable Finance Disclosure Regulation), and Regulation (EU) 2020/852 (Taxonomy Regulation).

status of sustainability information to make it more comparable to that of financial information.

The proposal will help reduce systemic risks to the economy. It will also improve the allocation of financial capital to companies and activities that address social, health and environmental problems. Finally, it will make companies more accountable for their impacts on people and the environment, thereby building trust between them and society.

The proposal aims to reduce unnecessary costs of sustainability reporting for companies, and to enable them to meet the growing demand for sustainability information in an efficient manner. It will bring clarity and certainty on what sustainability information to report, and make it easier for preparers to get the information they need for reporting purposes from their own business partners (suppliers, clients and investee companies). It should also reduce the number of demands companies receive for sustainability information in addition to the information they publish in their annual reports.

There are a number of important international initiatives in place. Their aim is to help to achieve the worldwide convergence and harmonisation of sustainability reporting standards. The EU fully supports this ambition. EU companies and investors that operate globally will benefit from such convergence and harmonisation. The Commission supports initiatives by the G20, the G7, the Financial Stability Board and others to generate international commitment to develop a baseline of global sustainability reporting standards that would build on the work of the Task Force on Climate-related Financial Disclosures. The proposals of the International Financial Reporting Standards Foundation to create a new Sustainability Standards Board are especially relevant in this context, as is the work already carried out by established initiatives including the Global Reporting Initiative (GRI), the Sustainability Accounting Standards Board (SASB), the International Integrated Reporting Council (IIRC), the Climate Disclosure Standards Board (CDSB) and CDP (formerly the Carbon Disclosure Project). This proposal aims to build on and contribute to international sustainability reporting initiatives. EU sustainability reporting standards should be developed in constructive two-way cooperation with leading international initiatives, and they should align with those initiatives as far as possible while taking into account European specificities.

This proposal consists of one Directive that would amend four existing pieces of legislation. In the first place, it would amend the Accounting Directive, revising some existing provisions and adding certain new provisions about sustainability reporting. In addition, it would amend the Audit Directive and the Audit Regulation, to cover the audit of sustainability information. Finally, it would amend the Transparency Directive to extend the scope of the sustainability reporting requirements to companies with securities listed on regulated markets, and to clarify the supervisory regime for sustainability reporting by these companies.

- **Consistency with existing policy provisions in the policy area**

The NFRD, together with the Sustainable Finance Disclosure Regulation (SFDR) and the Taxonomy Regulation, are the central components of the sustainability reporting requirements underpinning the EU's sustainable finance strategy. The purpose of this legal framework is to create a consistent and coherent flow of sustainability information throughout the financial value chain.

This proposal builds on and revises the sustainability reporting requirements set out in the NFRD, in order to make sustainability reporting requirements more consistent with the



broader sustainable finance legal framework, including the SFDR and the Taxonomy Regulation, and to tie in with the objectives of the European Green Deal.

The SFDR governs how financial market participants (including asset managers and financial advisers) should disclose sustainability information to end-investors and asset owners. To be able to fulfil the requirements of the SFDR – and therefore ultimately to be able to meet the needs of end investors including individuals and households – financial market participants need adequate information from investee companies. This proposal therefore aims to ensure that investee companies report the information financial market participants need in order to fulfil their own SFDR reporting requirements.

The Taxonomy Regulation sets up a classification system for environmentally sustainable economic activities, with the aim of scaling up sustainable investments and combatting the greenwashing of ‘sustainable’ financial products. It requires companies within the scope of the NFRD to disclose certain indicators about the extent to which their activities are environmentally sustainable according to the taxonomy. These disclosure obligations will be specified by a separate Commission delegated act. These indicators are complementary to the information that companies have to disclose according to the NFRD itself, and companies will have to report them alongside other sustainability information mandated by the NFRD.

This proposal aims to ensure that the reporting requirements for companies are consistent with the taxonomy. This will be achieved above all through the proposed sustainability reporting standards. These will take into account the indicators companies have to disclose about the extent to which their activities are environmentally sustainable according to the taxonomy, and the screening criteria and do-no-significant-harm thresholds of the taxonomy.

Compared to the NFRD sustainability reporting requirements, the principal novelties of this proposal are:

- to extend the scope of the reporting requirements to additional companies, including all large companies and listed companies (except listed micro-companies);
- to require assurance of sustainability information;
- to specify in more detail the information that companies should report, and require them to report in line with mandatory EU sustainability reporting standards;
- to ensure that all information is published as part of companies’ management reports, and disclosed in a digital, machine-readable format.

- **Consistency with other Union policies**

This proposal contributes to the completion of the Capital Markets Union, by enabling investors and other stakeholders to access comparable sustainability information from investee companies across the EU. As part of the action plan on the Capital Markets Union (COM(2020) 590 final), the Commission will put forward a legislative proposal to set up an EU-wide digital access platform to companies’ public financial and sustainability information (European Single Access Point (ESAP)). This proposal complements that initiative, by contributing to achieving the objectives of the Digital Finance Strategy for the EU (COM(2020) 591 final), by requiring that reported sustainability information be digitally tagged.

This proposal takes into consideration the Commission’s 2021 Work Programme, in particular the forthcoming initiative on sustainable corporate governance, and the Commission’s

commitment in the European Green Deal to stepping up action against false green claims and to supporting businesses and other stakeholders in developing standardised natural capital accounting practices in the EU and internationally.

This proposal ties in with the Commission's proposal for strengthening the application of the principle of equal pay for equal work or work of equal value by men and women, through pay transparency and enforcement mechanisms<sup>13</sup>. It also ties in with the proposed directive on improving gender balance on the boards of large EU listed companies by sharing information on companies' diversity policies<sup>14</sup>.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

### **• Legal basis**

The proposal's legal basis rests on Articles 50 and 114 of the Treaty on the Functioning of the European Union (TFEU). Article 50 of the TFEU is the legal basis for adopting EU measures aimed at attaining the right of establishment in the single market in company law. It is also the legal basis for Directives 2013/34/EU, 2006/43/EC, 91/674/EEC, 86/635/EEC, and it is part of the legal basis for Directive 2004/109/EC. Article 50 of the TFEU mandates the European Parliament and the Council to act by means of directives. In addition, Article 114 of the TFEU is a general legal act with the objective of establishing or ensuring the functioning of the single market – in this case, the free movement of capital. Article 114 of the TFEU is included as the legal basis for this directive amending Directive 2004/109/EC.

### **• Subsidiarity (for non-exclusive competence)**

The Accounting Directive, as amended by the NFRD, already regulates the disclosure of sustainability information in the EU. Transparency rules are necessary to ensure investor protection and financial stability across the EU. Common rules on sustainability reporting and its assurance ensure a level playing field for companies established in the different Member States. Significant differences in requirements for sustainability reporting and assurance between Member States create additional costs and complexity for companies operating across borders. This is detrimental to the single market. Member States acting alone are not able to ensure the consistency and comparability of sustainability reporting requirements across the EU.

In addition, only EU intervention can ensure that rules on sustainability reporting are consistent with other EU laws, including the Sustainable Finance Disclosure Regulation and the Taxonomy Regulation, and with delegated and implementing acts adopted pursuant to those regulations.

Sustainability reporting is the subject of increasing interest and regulatory intervention in jurisdictions around the world. The EU must therefore develop a coherent and comprehensive approach to sustainability reporting, in order to be able to engage constructively with its international partners. Compared to individual action by Member States, EU intervention can ensure a significant European contribution to global policy developments, in order to better defend the interests of European companies and other stakeholders.

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<sup>13</sup> COM (2021)93  
<sup>14</sup> COM(2012) 614



- **Proportionality**

A central element of this proposal is to require certain categories of companies to report according to mandatory sustainability reporting standards. As is the case for financial reporting, common standards are necessary to ensure that reported information is comparable and relevant. Common reporting standards will also greatly facilitate the digitalisation, assurance and enforcement of sustainability reporting.

This proposal envisages introducing a requirement to assure reported sustainability information, so that it is reliable. It also envisages requiring companies to digitally tag reported sustainability information. Digital tagging is essential in order to seize the opportunities digital technologies present to radically improve how sustainability information is used. The EU has already introduced a requirement for the digital tagging of financial information<sup>15</sup>.

This proposal takes a proportionate approach to determining which companies will be subject to mandatory reporting requirements. It does not impose new requirements on small and medium-sized enterprises (SMEs), except SMEs listed on EU regulated markets. The proposal exempts listed micro-companies from mandatory reporting obligations<sup>16</sup>.

The Commission will adopt standards for large companies and separate, proportionate standards for SMEs. The SME standards will be tailored to the capacities and resources of such companies. While SMEs listed on regulated markets would be required to use these proportionate standards, non-listed SMEs – which are the vast majority of SMEs – may choose to use them on a voluntary basis.

- **Choice of instrument**

This proposal comprises a Directive that amends provisions of the Accounting Directive, the Transparency Directive, the Audit Directive and the Audit Regulation, thereby ensuring coherence between the relevant provisions of these four instruments.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

In April 2021 the Commission published a fitness check of the EU framework for financial and non-financial corporate reporting, together with a mandatory review of certain aspects of

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<sup>15</sup> The European Single Electronic Format (ESEF), established by Delegated Regulation (EU) 2018/815.

<sup>16</sup> Article 3 of the Accounting Directive (2013/34/EU) defines categories of undertakings according to their size: Paragraph 1: [...] define micro-undertakings as undertakings which on their balance sheet dates do not exceed the limits of at least two of the three following criteria: (a) balance sheet total: EUR 350 000; (b) net turnover: EUR 700 000; (c) average number of employees during the financial year: 10. Paragraph 2: Small undertakings shall be undertakings which on their balance sheet dates do not exceed the limits of at least two of the three following criteria: (a) balance sheet total: EUR 4 000 000; (b) net turnover: EUR 8 000 000; (c) average number of employees during the financial year: 50. [...] Paragraph 3: Medium-sized undertakings shall be undertakings which are not micro-undertakings or small undertakings and which on their balance sheet dates do not exceed the limits of at least two of the three following criteria: (a) balance sheet total: EUR 20 000 000; (b) net turnover: EUR 40 000 000; (c) average number of employees during the financial year: 250. [...].

the NFRD<sup>17</sup>. The principal conclusion of the fitness check and the review was that the sustainability information companies currently report does not meet the needs of the information's intended users, and that the Commission should therefore propose a revision of the NFRD. This is consistent with the findings of the impact assessment accompanying this proposal (see below).

- **Stakeholder consultations**

The following consultation activities have helped to shape the content of this proposal.

- Open online public consultation from March to July 2018, to prepare the fitness check of the EU framework for corporate reporting.
- Targeted online consultation from February to March 2019, to help develop guidelines on climate-related reporting.
- Targeted online consultation of companies within the scope of the NFRD, carried out for the Commission by external consultants (CEPS) from December 2019 to March 2020.
- Online feedback for the Commission's inception impact assessment for the revision of the NFRD from January to February 2020.
- Open online public consultation on the revision of the NFRD from February to June 2020.
- Targeted online survey of SMEs (SME Panel) on sustainability reporting from March to May 2020.

The Commission also organised multi-stakeholder workshops on the materiality concept (November 2019) and the assurance of sustainability information (December 2020), as well as separate consultation meetings with different stakeholder groups in May 2020 (companies, civil society organisations and trade unions).

The consultations revealed some differences between users and preparers of sustainability information. Users tend to prefer detailed and comprehensive reporting requirements. Preparers expressed concern about the costs of such requirements, often stated a preference to retain a large degree of discretion about what to report and how to report it.

The open public consultation on the NFRD revision nevertheless showed that there was very strong support for mandatory sustainability reporting standards (over 80% of all respondents, including 81% of respondents who are or who represent companies that prepare sustainability reports). Many stakeholders stressed that if the EU develops sustainability reporting standards, it should build on and be consistent with international standard-setting initiatives. Stakeholders also emphasised the need to clarify the obligation to report according to the double materiality perspective.

Consultations also showed that there was strong support for measures to ensure the alignment of NFRD sustainability reporting requirements with relevant EU legislation, in particular the Sustainable Finance Disclosure Regulation and the Taxonomy Regulation.

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<sup>17</sup> [Publication office please insert reference to Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the review clauses in Directives 2013/34/EU, 2014/95/EU, and 2013/50/EU, and accompanying SWD- Fitness Check].

Stakeholders have a wide range of views about which categories of companies should be subject to mandatory reporting requirements. Most civil society organisations and trade unions support an extension of the NFRD's scope to a wide range of companies, including large non-listed companies and SMEs. Many financial institutions and asset managers support the introduction of proportionate reporting requirements for SMEs, especially listed SMEs. Mainstream business associations argued mainly against extending the scope of the reporting requirements. Organisations representing SMEs, and most SMEs themselves, oppose the introduction of mandatory requirements for SMEs but remain open to the idea of proportionate, voluntary standards for them. Various stakeholders group proposed that reporting requirements also apply to non-EU companies.

- **Collection and use of expertise**

In preparing this proposal, the Commission took into consideration the recommendations of the task force established by the European Financial Reporting Advisory Group (EFRAG) to explore the possibility of developing European sustainability reporting standards<sup>18</sup>. It also considered the recommendations of the President of EFRAG on possible governance changes to EFRAG if it is asked to develop such standards<sup>19</sup>. The governance of EFRAG would be modified accordingly before EFRAG submits any draft standards to the Commission. In particular, a new sustainability reporting pillar should be created alongside EFRAG's existing financial reporting pillar. The new pillar should have a robust governance structure and due process reflecting its role of developing standards. It should integrate a broader range of stakeholders than those traditionally involved in financial reporting, including a balanced representation of experts from national authorities, civil society and the private sector.

The Commission contracted consultants to collect data on sustainability reporting, including costs, through a survey of companies within the scope of the NFRD<sup>20</sup>. It also contracted consultants to analyse market and current practices in the provision of sustainability data, ratings and research for the financial sector<sup>21</sup>.

- **Impact assessment**

The Commission services have drafted an impact assessment for this proposal<sup>22</sup>. The Regulatory Scrutiny Board has given a positive opinion, with reservations, on the draft impact assessment<sup>23</sup>.

The impact assessment focused on policy choices in three areas: (1) standardisation – whether to develop EU sustainability reporting standards and require companies to use them; (2) assurance (audit) – whether reported sustainability information should be assured and if so, at what level; and (3) scope – which categories of companies should be subject to the reporting requirements.

The preferred policy option identified in the impact assessment would:

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<sup>18</sup> <https://www.efrag.org/Lab2>

<sup>19</sup> <https://www.efrag.org/Assets/Download?assetUrl=%2fsites%2fwebpublishing%2fSiteAssets%2fJean-Paul%2520Gauz%2c3%a8s%2520-%2520Ad%2520Personam%2520Mandate%2520-%2520Final%2520Report%2520-%252005-03-2021.pdf>

<sup>20</sup> Study on the Non-Financial Reporting Directive <https://data.europa.eu/doi/10.2874/229601>.

<sup>21</sup> Study on sustainability ratings, data and research: <https://op.europa.eu/en/publication-detail/-/publication/d7d85036-509c-11eb-b59f-01aa75ed71a1/language-en/format-PDF/source-183474104>

<sup>22</sup> Publication office: please insert link to IA SWD(2021)150

<sup>23</sup> Publication office: please insert link to RSB opinion on IA SWD(2021)150

- (1) require all companies within the scope to report in accordance with EU standards;
- (2) require all companies within the scope to seek limited assurance for reported sustainability information, while including an option to move towards a reasonable assurance requirement at a later stage ; and
- (3) extend the scope to all large companies, and all companies listed on EU regulated markets except listed micro-companies. The scope would include companies not established in the EU that are listed on EU regulated markets, and the EU subsidiaries of non-EU companies.

The preferred option is the best trade-off between two possible courses of action. One is detailed and prescriptive reporting requirements, a strong assurance requirement, and a broad scope – highly effective in meeting users’ needs but more expensive for preparers. The other is less detailed reporting requirements, a less strong assurance requirement, and a narrower scope – less effective in meeting users’ needs but also less expensive for preparers, at least in the short term. The aim is to achieve the best value outcome in terms of objectives and associated costs.

The preferred option also allows Member States to authorise independent assurance services providers other than statutory auditors or audit firms to carry out the assurance of sustainability reporting. This is intended to offer companies a broader choice of assurance service providers for the assurance of sustainably reporting.

Users will benefit from better access to comparable, relevant and reliable sustainability information from more companies. This will in turn reduce the risks of investment risks in the financial system, increase financial flows to companies that have a positive impact on people and the environment, and make companies more accountable. It will provide savers and investors who want to invest sustainably with the possibility to do so. The proposed option would ensure that approximately 49 000 companies report sustainability information (75% of the turnover of all limited liability companies), compared to the current 11 600 companies (47% of the turnover of all limited liability companies) that are within the scope of the NFRD. All large companies, and all companies listed on EU regulated markets (except listed micro-companies), would be required to apply EU sustainability reporting standards and seek assurance for reported information. By comparison, currently only an estimated 20% of large companies fully apply any sustainability reporting standards today and only 30% seek some form of assurance. The proposed option will have indirect positive effects on respect for fundamental rights, as well as on people and the environment, since more stringent reporting requirements can influence corporate behaviour for the better.

The total estimated costs of the preferred option for preparers are EUR 1.200 million in one-off costs and EUR 3.600 million in annual recurring costs. In addition, preparers will incur costs as a result of the reporting requirements of Article 8 of the Taxonomy Regulation.<sup>24</sup> If the EU takes no action, costs for preparers are in any case expected to increase substantially due to an increase in uncoordinated information demands from users, the absence of consensus about what information companies should report in order to meet users’ needs, and persistent difficulties in obtaining the sustainability information that preparers need for their own reporting purposes from suppliers, clients and investee companies. The unavailability of

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<sup>24</sup> The estimated magnitude of these costs is included in the impact assessment of the delegated act on a climate change mitigation and adaptation taxonomy (C(2021)2800; IA SWD(2021)152): EUR 1.200–3.700 million one-off costs and EUR 600–1.500 million recurring costs per year.

sufficiently detailed data makes it impossible to calculate the costs that preparers would incur in the absence of new rules. However, it is estimated that the use of standards could lead to annual savings of EUR 24 200-41 700 per company (around EUR 280-490 million per year for the current NFRD population and EUR 1.200-2.000 million per year for the preferred option), if standards completely eliminated the need for additional information requests to preparers<sup>25</sup>.

EU companies risk incurring higher reporting costs than non-EU companies if other jurisdictions do not take an approach similar to the approach outlined in this proposal. This could lead to unequal treatment of EU and non-EU companies and therefore be detrimental to the level playing field in the EU Single Market. To mitigate this risk, EU subsidiaries of non-EU companies, as well as any non-EU company with transferable securities listed on an EU regulated market, are covered by the reporting requirements set out in the proposal.

- **Regulatory fitness and simplification**

To help ensure investor protection, all companies listed on regulated markets should in principle be subject to the same disclosure rules. SMEs listed on EU regulated markets would therefore have to fulfil the proposed new sustainability reporting requirements<sup>26</sup>. However, the requirements for SMEs listed on EU regulated markets would apply only 3 years after they apply to other companies, to allow for the relative economic difficulties faced by smaller companies as a result of the COVID-19 pandemic. This phasing-in period would also allow listed SMEs to apply the new requirements when reporting and assurance practices for sustainability information have reached a higher degree of maturity. The disclosure requirements of this proposal would not apply to SMEs with transferable securities listed on SME growth markets or multilateral trading facilities (MTFs). In addition, for reasons of proportionality, they would not apply to micro-enterprises listed on EU regulated markets.

This proposal does not require other SMEs to report sustainability information. However, non-listed SMEs may decide to use on a voluntary basis the sustainability reporting standards that the Commission will adopt as delegated acts for reporting by listed SMEs. These aim to enable any SME to report information cost-efficiently in response to the numerous requests for information they receive from other companies with whom they do business, such as banks, insurance companies and large corporate clients, and to help define the limits for the information that companies can reasonably expect SMEs in their value chain to provide. Such standards should also help SMEs to attract additional investment and funding, and to participate fully in, and contribute to, the transition to a sustainable economy outlined in the European Green Deal. The SME standards will set a reference for companies that are within the scope of the Corporate Sustainability Reporting Directive regarding the level of sustainability information that they could reasonably request from SME suppliers and clients in their value chains..

This proposal is digital-ready, since it requires companies to digitally tag reported sustainability information in accordance with a digital taxonomy.

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<sup>25</sup> These calculations are based on the replies to the survey carried out by the Sustainability Institute (ERM) as part of their study on sustainability ratings and research (<https://op.europa.eu/en/publication-detail/-/publication/d7d85036-509c-11eb-b59f-01aa75ed71a1/language-en/format-PDF/source-183474104>).

<sup>26</sup> Except listed micro-companies.



- **Fundamental rights**

The proposal respects the fundamental rights enshrined, and adheres to the principles stated, in the Charter of Fundamental Rights of the European Union. It will have an indirect positive impact on fundamental rights, given that more stringent reporting requirements can influence corporate behaviour for the better. It should serve to make companies more aware of fundamental rights and positively influence how they identify and manage actual and potential adverse impacts on fundamental rights. It should also increase capital flows to companies that respect fundamental rights, and in general make companies more accountable for their impact on fundamental rights.

#### **4. BUDGETARY IMPLICATIONS**

The proposal does not have any budgetary implications. Existing budgetary resources will be used for expenditure to fund the development of EU sustainability reporting standards.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

To monitor progress towards achieving the proposal's specific objectives, the Commission will explore the possibility of organising periodic surveys of users and preparers, depending on the availability of financial resources.

The proposal includes a requirement that the Commission report to the European Parliament and to the Council on the implementation of assurance requirements no later than 3 years after the entry into application of this Directive. The report will be accompanied, if appropriate, by legislative proposals for stricter assurance requirements ('reasonable assurance').

This proposal does not require an implementation plan.

- **Explanatory documents (for directives)**

No explanatory documents are considered necessary.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 amends Directive 2013/34/EU ("the Accounting Directive").

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

Paragraph (2) of Article 1 defines certain terms that are necessary for the proposal. It introduces and defines the terms "sustainability matters" and "sustainability reporting", whereas the existing provisions of the Accounting Directive refer to "non-financial information". It also defines the terms "independent assurance services provider" and "intangibles".

Paragraph (3) of Article 1 replaces Article 19a of the Accounting Directive, which specifies the sustainability reporting requirements for certain companies. The proposal amends Article 19a as follows:



- It modifies the personal scope of the reporting requirements, extending their application to all large companies and all companies with securities listed on EU regulated markets, except micro-companies. In order to alleviate the reporting burden for listed SMEs, they are to start reporting in accordance with this Directive 3 years after its entry into application.
- It clarifies the principle of double materiality, removing any ambiguity about the fact that companies should report information necessary to understand how sustainability matters affect them, and information necessary to understand the impact they have on people and the environment.
- It specifies in greater detail the information that companies should disclose. Compared to the existing provisions, it introduces new requirements for companies to provide information about their strategy, targets, the role of the board and management, the principal adverse impacts connected to the company and its value chain, intangibles, and how they have identified the information they report.
- It specifies that companies should report qualitative and quantitative information, forward-looking and retrospective information, and information that covers short, medium and long-term time horizons as appropriate.
- It requires all companies within its scope to report in accordance with European sustainability reporting standards, and allows listed SMEs within its scope to report in accordance with sustainability reporting standards specific for SMEs.
- It removes the possibility for Member States to allow companies to report the required information in a separate report that is not part of the management report.
- It requires exempted subsidiary companies to publish the consolidated management report of the parent company reporting at group level, and to include a reference in its legal-entity (individual) management report to the fact that the company in question is exempted from the requirements of the Directive.

Paragraph (4) of Article 1 introduces three new provisions, Articles 19b, 19c and 19d, into the Accounting Directive, on sustainability reporting standards. Article 19b empowers the Commission to adopt EU sustainability reporting standards by means of delegated acts and specifies the requirements for their adoption. Firstly, it specifies minimum quality criteria that information reported in accordance with the standards would have to meet. Secondly, it identifies the topics standards should cover. Thirdly, it identifies certain instruments and initiatives that the Commission should take particular account of when deciding the content of the delegated acts, including certain EU legislation, and the work of global standard-setting initiatives for sustainability reporting. It also requires the Commission to adopt a first set of standards by 31 October 2022. This set of standards should specify information that companies should report about all sustainability matters and all reporting areas listed in Article 19a(2). These delegated acts should at least specify the information that companies should report to serve the needs of financial market participants subject to the disclosure requirements of Regulation (EU) 2019/2088. A second set of standards should be adopted at the latest by 31 October 2023. This set of standards should specify complementary information that companies should report about sustainability matters and reporting areas listed in Article 19a(2) where necessary, and information specific to the sector in which a company operates. Finally, Article 19b requires the Commission to review the standards at least every 3 years to take account of relevant developments, including developments in international standards. Article 19c requires the Commission to adopt sustainability reporting standards for small and medium sized companies by 31 October 2023. Article 19d requires

companies to prepare their financial statements and their management report in a single electronic reporting format in accordance with Article 3 of Commission Delegated Regulation (EU) 2019/815 and to mark-up sustainability information as and when specified in that Regulation<sup>27</sup>.

Paragraph (5) of Article 1 amends Article 20 to require listed companies subject to this provision to include a reference to gender in the description of the diversity policy applied in relation to the company's administrative, management and supervisory bodies. It also amends Article 20 to allow listed undertakings subject to Article 20 to comply with the requirements it sets out in points (c), (f) and (g) by including the necessary information as part of their sustainability reporting<sup>28</sup>.

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

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

Paragraph (8) of Article 1 amends Article 30 of the Accounting Directive in order to align it with the new sustainability reporting requirements. Firstly, it is amended to require Member States to ensure that within 12 months after the balance sheet date, companies publish their duly approved annual financial statements and management report in the electronic format prescribed in the new Article 19d. Secondly, it is amended to require that if an opinion on sustainability reporting is given by an independent assurance services provider other than the statutory auditor, this opinion be published together with the annual financial statements and management report. Finally, it is amended to require Member States to ensure that management reports containing sustainability reporting are made available to the relevant officially appointed mechanism referred to in Directive 2004/109/EC of the European Parliament and of the Council (the Transparency Directive), without delay, following their publication. It specifies that if companies that prepare sustainability reporting are not listed on EU regulated markets, the relevant officially appointed mechanism should be one of the officially appointed mechanisms of the Member State where the company in question has its registered office. This is necessary for the inclusion of the sustainability information disclosed by companies in the European Single Access Point which will be established as announced in action 1 of the action plan on the Capital Markets Union.

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<sup>27</sup> A mark-up language is a computer language that uses a specific coding technique (the "tags") to define elements within a document, allowing the presentation of information in a way that both machines and humans can read.

<sup>28</sup> Point (c) refers to internal control and risk management systems in relation to the financial reporting process. Point (f) refers to the composition and operation of the administrative, management and supervisory bodies. Point (g) refers to the diversity policy applied in relation to the undertaking's administrative, management and supervisory bodies.

Paragraph (9) of Article 1 amends Article 33 of the Accounting Directive, aligning the collective responsibility of the members of the administrative, management and supervisory bodies of a company with the revised sustainability reporting requirements. In particular, it requires administrative, management and supervisory bodies to ensure that the company in question has reported in accordance with EU sustainability reporting standards, and in the digital format required, and deletes the reference to the currently allowed separate report for sustainability reporting.

Paragraph (10) of Article 1 amends Article 34 of the Accounting Directive with regard to the assurance of sustainability reporting. In particular, it requires the statutory auditor to perform a limited assurance engagement on a company's sustainability reporting, including on the compliance of the sustainability reporting with the reporting standards, on the process carried out by the company to identify the information reported pursuant to the standards, on the mark-up of sustainability reporting, and on the indicators reported pursuant to Article 8 of the Taxonomy Regulation. In addition, it allows Member States to allow any independent assurance services provider accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council to provide an opinion on sustainability reporting on the basis of a limited assurance engagement. It also requires Member States to ensure that consistent requirements are set out for all persons and firms, including statutory auditors and audit firms, who are allowed to provide the opinion on the assurance of sustainability reporting.

Paragraph (11) of Article 1 amends Article 49 of the Accounting Directive, laying down the conditions for empowering the Commission to adopt the delegated acts on sustainability reporting standards referred to in the new Article 19b. It requires the Commission to take account of the technical advice of the European Financial Reporting Advisory Group (EFRAG) when preparing those acts, provided it is developed with proper due process, public oversight and transparency, and with the expertise of relevant stakeholders, and that it is accompanied by cost-benefit analyses, which will facilitate the adoption of standards by the Commission. This paragraph also requires the European Securities and Markets Authority (ESMA) to provide an opinion on the technical advice provided by EFRAG before it adopts standards. This opinion shall be provided within two months from the date of receipt of the request from the Commission. This is a reasonable period as ESMA will be involved in EFRAG's work, and will therefore be familiarised with the content of EFRAG's technical advice before it is submitted to the Commission. The Commission is also required to consult the Member State Expert Group on Sustainable Finance, the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), the European Environment Agency (EEA), the European Union Agency for Fundamental Rights (FRA), the European Central Bank, the Committee of European Auditing Oversight Bodies and the Platform on Sustainable Finance before adopting standards. Where any of those bodies decide to submit an opinion, they shall do so within two months from the date of being consulted by the Commission.

Paragraph (12) of Article 1 amends Article 51 of the Accounting Directive, specifying the minimum types of sanctions and administrative measures that Member States should provide for in the case of infringements of the national provisions transposing the sustainability reporting requirements of the Accounting Directive.

Article 2 amends Directive 2004/109/EC (the Transparency Directive).

Paragraph (1) of Article 2 introduces and defines the term “sustainability reporting”, necessary for the proposal.

Paragraph (2) of Article 2 amends Article 4 of the Transparency Directive, in order to take into consideration the sustainability reporting part of the regulated information to be drawn up and published under its provisions. Firstly, it is amended in order to require that the annual financial report includes statements made by the people responsible for financial reporting in the issuer that to the best of their knowledge, the management report is prepared in accordance with sustainability reporting standards as required by Directive 2013/34/EU, where appropriate. The requirement to include sustainability reporting in the management report, as a result of the amendments introduced by this Directive, obviates the need to modify Article 4(2)(b) of Directive 2004/109/EC. Secondly, the references to provisions of the Accounting Directive and Directive 2006/43/EC (the Audit Directive) are updated as regards the requirement to audit financial statements in accordance with Article 34(1) of the Accounting Directive, and to state whether the auditor or audit firm has identified material misstatements in the management report, and as regards the requirement to disclose the audit report, including the opinion on the assurance of sustainability reporting. Finally, the references to provisions of the Accounting Directive as regards the preparation of the management report are updated and amended to require sustainability reporting. These amendments enable the extension of the sustainability reporting requirements to companies listed on EU regulated markets, except micro-companies, including non-EU issuers. They also clarify the legal mandate national competent authorities have to supervise sustainability reporting.

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

Paragraph (4) of Article 2 introduces Article 28(d) in the Transparency Directive to require the European Securities and Markets Authority (ESMA) to issue guidelines for national competent authorities in order to promote supervisory convergence of sustainability reporting. The ESMA Regulation (Regulation (EU) No 1095/2010) identifies the Transparency Directive as one of the Union legislative acts that define ESMA's scope of action.

Article 3 amends Directive 2006/43/EC (the Audit Directive).

Paragraph (1) of Article 3 amends Article 1 of the Audit Directive, its subject matter, in order to include the assurance of annual and consolidated sustainability reporting, where carried out by the statutory auditor or audit firm carrying out the statutory audit of financial statements.

Paragraph (2) of Article 3 amends and inserts certain definitions, necessary for the proposal, in Article 2 of the Audit Directive. It amends the definitions of 'statutory auditor' and 'audit firm' in order to take into account their potential work in assuring sustainability reporting, where applicable. It also introduces and defines the term 'assurance of sustainability reporting' and 'sustainability reporting'.

Paragraphs (3)–(7) of Article 3 amend Articles 6-11 of the Audit Directive, containing the rules on the approval, continuing professional education and mutual recognition of statutory auditors and audit firms, in order to ensure that statutory auditors have the necessary level of theoretical knowledge of subjects relevant to the assurance of sustainability reporting and the ability to apply such knowledge in practice.

Paragraph (7) of article 3 amends Article 14, which contains the rules on the procedures that competent authorities should set out for the approval of statutory auditors from a different Member State. It is amended to ensure that where the Member State decides that the applicant seeking approval should be subject to an aptitude test, this test also covers the statutory auditor's adequate knowledge of the laws and regulations of the host Member State relevant to the assurance of sustainability reporting.

Paragraph (8) of article 3 introduces Article 14a which comprises a grandfathering clause to ensure that approved statutory auditors can continue carrying out statutory audits and can carry out audits of sustainability reporting once the amended legal requirements apply. Member States should ensure that already approved statutory auditors acquire the necessary knowledge in sustainability reporting and the assurance of sustainability reporting via the continuing education requirement of Article 13 of the Audit Directive.

Paragraph (9) of Article 3 amends Article 24b to adapt the rules on the organisation of the work of the auditor to include references to their work on the assurance of sustainability reporting. In particular, it is amended in order to require that the key audit partner(s) is/are actively involved in carrying out the assurance of sustainability reporting; that when carrying out the assurance of sustainability reporting, the statutory auditor devotes sufficient time to the engagement and assigning sufficient resources to enable them to carry out their duties appropriately; that the client account record specifies the fees for the assurance of sustainability reporting; and that the audit file includes information on the assurance of sustainability reporting, where carried out by the statutory auditor.

Paragraph (10) of Article 3 amends Article 25 to require Member States to put adequate rules in place to prevent the fees for the assurance of sustainability reporting from being influenced or determined by the provision of additional services to the audited entity, or being based on any form of contingency.

Paragraph (11) of Article 3 inserts Article 25b to extend Audit Directive rules on the professional ethics, independence, objectivity, confidentiality and professional secrecy required of auditors of financial statements to their work on the assurance of sustainability reporting.

Paragraph (12) of Article 3 inserts Article 26a, requiring Member States to require auditors to carry out assurance engagements of sustainability reporting in accordance with assurance standards adopted by the Commission and to apply national assurance standards, procedures or requirements unless the Commission has adopted an assurance standard covering the same subject-matter. It empowers the Commission to adopt assurance standards by means of delegated acts in order to set out the procedures that the auditor shall perform in order to draw its conclusions on the assurance of sustainability reporting, including engagement planning, risk consideration and response to risks, and the type of conclusions to be included in the audit report. It also requires auditors to base their opinion on sustainability reporting on a reasonable assurance engagement should the Commission use the option to adopt standards for reasonable assurance.

Paragraph (13) of Article 3 inserts Article 27a in order to extend the rules on the statutory audit of a group of companies to the assurance of consolidated sustainability reporting, where carried out by the statutory auditor.

Paragraph (14) of Article 3 amends Article 28 in order to require the statutory auditor(s) or the audit firm(s) carrying out the assurance of sustainability reporting to present its/their



results in the audit report, and to prepare the report in accordance with the requirements for assurance standards adopted by the EU or Member State concerned. In particular, the audit report should specify the annual or consolidated sustainability reporting and the date and period they cover. It should identify the sustainability reporting framework applied in their preparation. It should include a description of the scope of the assurance of sustainability reporting and identify the assurance standards in accordance with which the assurance of sustainability reporting was conducted. Finally, it should include the statutory auditor's opinion on sustainability reporting.

Paragraph (15) of Article 3 amends Article 29 of the Audit Directive concerning the system for the quality assurance review of statutory auditors and audit firms in order to ensure that quality assurance reviews take place for the audits of sustainability reporting and that the people who carry out quality assurance reviews have appropriate professional education and relevant experience in the assurance of sustainability reporting.

Paragraph (16) of Article 3 inserts Article 30g in order to clarify that the investigations and sanctions regime for statutory auditors and audit firms carrying out statutory audits also apply to audits of sustainability reporting.

Paragraph (17) of Article 3 inserts Article 36a in order to clarify that the provisions on public oversight and regulatory arrangements between Member States as regards statutory audits also apply to the assurance of sustainability reporting.

Paragraph (18) of Article 3 inserts Article 38a in order to clarify that the provisions on the appointment and dismissal of statutory auditors and audit firms as regards statutory audits also apply to the assurance of sustainability reporting.

Paragraph (19) of Article 3 amends Article 39 in order to clarify the tasks of the audit committee for the assurance of sustainability reporting. In particular, the audit committee should inform the administrative or supervisory body of the audited entity of the outcome of the assurance of sustainability reporting and explain how the audit committee contributed to the integrity of sustainability reporting and what the role of the audit committee was in that process. It should monitor the sustainability reporting process, including the digital reporting process, and the process carried out by the company to identify the information reported according to the relevant sustainability reporting standards and submit recommendations or proposals to ensure its integrity. It should monitor the effectiveness of the company's internal quality control and risk management systems and, where applicable, its internal audit, regarding the sustainability reporting of the audited entity, including its digital reporting as will be required under the amended Accounting Directive, without breaching its independence. Finally, it should monitor the assurance of the annual and consolidated sustainability reporting, and review and monitor the independence of the statutory auditors or the audit firms.

Paragraph (20) of Article 3 amends Article 45 in order to align the requirements for the registration and oversight of non-EU auditors and audit entities with the new scope of the Directive, covering the assurance of sustainability reporting.

Paragraph (21) of Article 3 amends Article 48a in order to set out the conditions for the exercise of the delegation of powers to the Commission to adopt assurance standards for sustainability reporting pursuant to Article 26a(2).

Article 4 amends Regulation (EU) No 537/2014 (the Audit Regulation).



Paragraph (1) of Article 4 amends Article 5 of the Audit Regulation to prohibit the provision of consulting services for the preparation of sustainability reporting in the time periods specified in Article 5 of the Audit Regulation, when statutory auditors or audit firms carrying out the statutory audit are also carrying out the assurance of sustainability reporting.

Paragraph (2) of Article 4 amends Article 14 in order to require statutory auditors and audit firms to annually inform the competent authority in question of which revenues, among the revenues from non-audit services, were generated from the assurance of sustainability reporting.

Article 5 requires Member States to transpose Articles 1 to 3 of the Directive by 1 December 2022, and to ensure that its provisions apply to companies for the financial year starting on 1 January 2023 or during calendar year 2023.

Article 6 sets out the date of entry into application of the amended provisions of Regulation (EU) No 537/2014 (the Audit Regulation) on 1 January 2023.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 50 and 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank,

Having regard to the opinion of the European Economic and Social Committee<sup>29</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In its communication on the European Green Deal adopted on 11 December 2019<sup>30</sup>, the European Commission made a commitment to review the provisions concerning non-financial reporting of Directive 2013/34/EU of the European Parliament and of the Commission.<sup>31</sup> The European Green Deal is the European Union's new growth strategy. It aims to transform the Union into a modern, resource-efficient and competitive economy with no net emissions of greenhouse gases by 2050. It also aims to protect, conserve and enhance the Union's natural capital, and protect the health and well-being of citizens from environment-related risks and impacts. The European Green Deal aims at decoupling economic growth from resource use, and ensuring that all regions and citizens of the Union participate in a socially just transition to a sustainable economic system. It will contribute to the objective of building an economy that works for the people, strengthening the EU's social market economy, helping to ensure that it is future-ready and that it delivers stability, jobs, growth and investment. These goals are especially important considering the socio-economic damage caused by the COVID-19 pandemic and the need for a sustainable, inclusive and fair recovery. In its proposal of 4 March 2020 for a European Climate Law, the

<sup>29</sup> OJ C [...], [...], p. [...].

<sup>30</sup> COM(2019) 640 final.

<sup>31</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

European Commission proposed to make the objective of climate neutrality by 2050 binding in the Union.<sup>32</sup>

- (2) In its *Action Plan: Financing Sustainable Growth* the Commission set out measures to achieve the following objectives: reorient capital flows towards sustainable investment in order to achieve sustainable and inclusive growth, manage financial risks stemming from climate change, resource depletion, environmental degradation and social issues, and foster transparency and long-termism in financial and economic activity<sup>33</sup>. The disclosure by undertakings of relevant, comparable and reliable sustainability information is a prerequisite for meeting those objectives. The European Parliament and the Council adopted a number of legislative acts as part of the implementation of the Action Plan on Financing Sustainable Growth. Regulation (EU) 2019/2088 of the European Parliament and of the Council<sup>34</sup> governs how financial market participants and financial advisers are to disclose sustainability information to end investors and asset owners. Regulation (EU) 2020/852 of the European Parliament and of the Council<sup>35</sup> creates a classification system of environmentally sustainable economic activities with the aim of scaling up sustainable investments and combatting greenwashing of financial products that unduly claim to be sustainable. Regulation (EU) 2019/2089 of the European Parliament and of the Council<sup>36</sup>, complemented by Commission Delegated Regulations (EU) 2020/1816<sup>37</sup>, (EU) 2020/1817<sup>38</sup> and (EU) 2020/1818<sup>39</sup>, introduces environmental, social and governance ('ESG') disclosure requirements for benchmarks administrators and minimum standards for the construction of EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks. Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>40</sup> requires large institutions which have issued securities that are admitted to trading on a regulated market to disclose information on ESG risks from 28 June 2022. The new prudential framework for investment firms set by Regulation (EU)

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<sup>32</sup> Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law) [2020/0036 (COD)]

<sup>33</sup> COM(2018) 97 final.

<sup>34</sup> Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

<sup>35</sup> Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

<sup>36</sup> Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks (OJ L 317, 9.12.2019, p. 17).

<sup>37</sup> Commission Delegated Regulation (EU) 2020/1816 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards the explanation in the benchmark statement of how environmental, social and governance factors are reflected in each benchmark provided and published (OJ L 406, 3.12.2020, p. 1).

<sup>38</sup> Commission Delegated Regulation (EU) 2020/1817 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards the minimum content of the explanation on how environmental, social and governance factors are reflected in the benchmark methodology (OJ L 406, 3.12.2020, p. 12).

<sup>39</sup> Commission Delegated Regulation (EU) 2020/1818 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks (OJ L 406, 3.12.2020, p. 17).

<sup>40</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

2019/2033 of the European Parliament and of the Council<sup>41</sup> and Directive (EU) 2019/2034 of the European Parliament and of the Council<sup>42</sup> contains provisions concerning the introduction of an ESG risk dimension in the supervisory review and evaluation process (SREP) by competent authorities, and contains ESG risks disclosure requirements for investment firms, applicable from 26 December 2022. The Commission has also announced a proposal on a European Green Bond Standard in its Work Programme for 2021, following up on the Action Plan on Financing Sustainable Growth.

- (3) On 5 December 2019, in its conclusions on deepening the Capital Markets Union, the Council stressed the importance of reliable, comparable and relevant information on sustainability risks, opportunities and impacts, and called on the Commission to consider the development of a European non-financial reporting standard.
- (4) In its resolution on sustainable finance of 29 May 2018<sup>43</sup>, the European Parliament called for the further development of non-financial reporting requirements in the framework of Directive 2013/34/EU. In its resolution on sustainable corporate governance of 17 December 2020<sup>44</sup>, the European Parliament welcomed the Commission's commitment to review Directive 2013/34/EU and expressed the need to set up a comprehensive Union framework on non-financial reporting that contains mandatory Union non-financial reporting standards. The European Parliament called for the expansion of the scope of the reporting requirements to additional categories of undertakings and for the introduction of an audit requirement.
- (5) On 25 September 2015, the UN General Assembly adopted a new global sustainable development framework: the 2030 Agenda for Sustainable Development (the '2030 Agenda'). The 2030 Agenda has at its core the Sustainable Development Goals and covers the three dimensions of sustainability: economic, social and environmental. The Commission communication of 22 November 2016 on the next steps for a sustainable European future linked the Sustainable Development Goals to the Union policy framework to ensure that all Union actions and policy initiatives, both in and beyond the Union, take those goals on board at the outset.<sup>45</sup> In its conclusions of 20 June 2017, the Council confirmed the commitment of the Union and its Member States to the implementation of the 2030 Agenda in a full, coherent, comprehensive, integrated and effective manner, in close cooperation with partners and other stakeholders.<sup>46</sup>
- (6) Directive 2014/95/EU of the European Parliament and the Council<sup>47</sup> amended Directive 2013/34/EU as regards disclosure of non-financial information by certain large undertakings and groups. Directive 2014/95/EU introduced a requirement on

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<sup>41</sup> Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1).

<sup>42</sup> Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 5.12.2019, p. 64).

<sup>43</sup> 2018/2007(INI).

<sup>44</sup> A9-0240/2020 (INI).

<sup>45</sup> COM(2016) 739 final

<sup>46</sup> Council conclusions "A sustainable European future: The EU response to the 2030 Agenda for Sustainable Development", 20 June 2017.

<sup>47</sup> Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (OJ L 330, 15.11.2014, p. 1).

undertakings to report information on, as a minimum, environmental, social and employee matters, respect for human rights, and anti-corruption and bribery matters. With regard to these topics, Directive 2014/95/EU required undertakings to disclose information under the following reporting areas: business model, policies (including due diligence processes implemented), the outcome of the policies, risks and risk management, and key performance indicators relevant to the business.

- (7) Many stakeholders consider the term ‘non-financial’ to be inaccurate, in particular because it implies that the information in question has no financial relevance. Increasingly, however, the information in question does have financial relevance. Many organisations, initiatives and practitioners in this field refer to ‘sustainability’ information. It is therefore preferable to use the term ‘sustainability information’ in place of ‘non-financial information’. Directive 2013/34/EU should therefore be amended to take account of this change in terminology.
- (8) The ultimate beneficiaries of better sustainability reporting by undertakings are individual citizens and savers. Savers who want to invest sustainably will have the opportunity to do so, while all citizens should benefit from a stable, sustainable and inclusive economic system. To realise these benefits, the sustainability information disclosed in undertaking’s annual reports first has to reach two primary groups (‘users’). The first group of users consists of investors, including asset managers, who want to better understand the risks and opportunities that sustainability issues pose to their investments and the impacts of those investments on people and the environment. The second group of users consists of organisations, including non-governmental organisations and social partners, that wish to better hold undertakings to account for their impacts on people and the environment. Other stakeholders may also make use of sustainability information disclosed in annual reports. The business partners of undertakings, including customers, may rely on this information to understand, and where necessary report on, the sustainability risks and impacts through their own value chains. Policy makers and environmental agencies may use such information, in particular on an aggregate basis, to monitor environmental and social trends, to contribute to environmental accounts, and to inform public policy. Few individual citizens and consumers directly consult undertaking’s reports, but they may use such information indirectly such as when considering the advice or opinions of financial advisers or non-governmental organisations. Many investors and asset managers purchase sustainability information from third party data providers, who collect information from various sources, including public corporate reports.
- (9) There has been a very significant increase in demand for corporate sustainability information in recent years, especially on the part of the investment community. That increase in demand is driven by the changing nature of risks to undertakings and growing investor awareness of the financial implications of these risks. That is especially the case for climate-related financial risks. Awareness of the risks to undertakings and to investments resulting from other environmental issues and from social issues, including health issues, is also growing. The increase in demand for sustainability information is also driven by the growth in investment products that explicitly seek to meet certain sustainability standards or achieve certain sustainability objectives. Part of that increase is the logical consequence of previously adopted Union legislation, notably Regulation (EU) 2019/2088 and Regulation (EU) 2020/852. Some of the increase would have happened in any case, due to fast-changing citizen awareness, consumer preferences and market practices. The COVID-19 pandemic will further accelerate the increase in users’ information needs, in particular as it has



exposed the vulnerabilities of workers and of undertaking's value chains. Information on environmental impacts is also relevant in the context of mitigating future pandemics with human disturbance of ecosystems increasingly linked to the occurrence and spread of diseases.

- (10) Undertakings themselves stand to benefit from carrying out high quality reporting on sustainability matters. The growth in the number of investment products that aim to pursue sustainability objectives means that good sustainability reporting can enhance an undertaking's access to financial capital. Sustainability reporting can help undertakings to identify and manage their own risks and opportunities related to sustainability matters. It can provide a basis for better dialogue and communication between undertakings and their stakeholders, and can help undertakings to improve their reputation.
- (11) The report on the review clause of the Non-Financial Reporting Directive (Directive 2014/95/EU), and its accompanying fitness check on corporate reporting, identified problems as to the effectiveness of that Directive<sup>48</sup>. There is significant evidence that many undertakings do not disclose material information on all major sustainability-related topics. The report also identified as significant problems the limited comparability and reliability of sustainability information. Additionally, many undertakings from which users need sustainability information are not obliged to report such information.
- (12) In the absence of policy action, the gap between users' information needs and the sustainability information reported by undertakings is expected to grow. This gap has significant negative consequences. Investors are unable to take sufficient account of sustainability-related risks and opportunities in their investment decisions. The aggregation of multiple investment decisions that do not take adequate account of sustainability-related risks has the potential to create systemic risks that threaten financial stability. The European Central Bank and international organisations such as the Financial Stability Board have drawn attention to those systemic risks, in particular in the case of climate. Investors are also less able to channel financial resources to undertakings and economic activities that address and do not exacerbate social and environmental problems, which undermines the objectives of the European Green Deal and the Action Plan on Financing Sustainable Growth. Non-governmental organisations, social partners, communities affected by undertakings' activities, and other stakeholders are less able to hold undertakings accountable for their impacts on people and the environment. This creates an accountability deficit, and may contribute to lower levels of citizen trust in businesses, which in turn may have negative impacts on the efficient functioning of the social market economy. The lack of generally accepted metrics and methods for measuring, valuing, and managing sustainability-related risks is also an obstacle to the efforts of undertakings to ensure that their business models and activities are sustainable.
- (13) The report on the review clause of Directive 2014/95/EU, and its accompanying fitness check on corporate reporting, also recognised a significant increase in information requests for information about sustainability matters to undertakings in an attempt to address the existing information gap. In addition, ongoing expectations on

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<sup>48</sup> Publication office: please insert reference to Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the review clauses in Directives 2013/34/EU, 2014/95/EU, and 2013/50/EU, and accompanying SWD- Fitness Check.



undertakings to use a variety of different frameworks and standards are likely to continue and may even intensify as the value placed on sustainability information continues to grow. In the absence of policy action to build consensus on the information that undertakings should report, there will be significant increases in costs and burden for reporting undertakings and for users of such information.

- (14) The growing gap between users' information needs and the current reporting practices of undertakings makes it more likely that individual Member States will introduce increasingly divergent national rules or standards. Different reporting requirements in different Member States would create additional costs and complexity for undertakings operating across borders and therefore undermine the single market, and would undermine the right of establishment and the free movement of capital across the Union. Those different reporting requirements also make reported information less comparable across borders, undermining the capital markets union.
- (15) Articles 19a and 29a of Directive 2013/34/EU apply to large undertakings that are public-interest entities with an average number of employees in excess of 500, and to public-interest entities that are parent undertakings of a large group with an average number of employees in excess of 500 on a consolidated basis, respectively. In view of the growth of users' needs for sustainability information, additional categories of undertakings should be required to report such information. It is therefore appropriate to require all large undertakings and all undertakings listed on regulated markets, except micro undertakings, to report detailed sustainability information. In addition, all undertakings that are parent undertakings of large groups should prepare sustainability reporting at group level.
- (16) The requirement that also large non-listed undertakings should disclose information on sustainability matters is mainly driven by concerns about the impacts and accountability of such undertakings, including through their value chain. In this respect, all large undertakings should be subject to the same requirements to report sustainability information publicly. In addition, financial market participants also need information from those large non-listed undertakings.
- (17) The requirement that undertakings not established in the Union but with securities listed on regulated markets should also disclose information on sustainability matters responds to the needs of financial market participants for information from such undertakings in order to understand the risks and impacts of their investments, and to comply with the disclosure requirements laid down in Regulation (EU) 2019/2088.
- (18) Considering the growing relevance of sustainability-related risks and taking into account that small and medium-sized enterprises (SMEs) listed on regulated markets comprise a significant proportion of all listed undertakings in the Union, in order to ensure investor protection it is appropriate to require that also those SMEs disclose information on sustainability matters. The introduction of this requirement will help to ensure that financial market participants can include smaller listed undertakings in investment portfolios on the basis that they report the sustainability information that financial market participants need. It will therefore help to protect and enhance the access of smaller listed undertakings to financial capital, and avoid discrimination against such undertakings on the part of financial market participants. The introduction of this requirement is also necessary to ensure that financial market participants have the information they need from investee undertakings to be able to comply with their own sustainability disclosure requirements laid down in Regulation (EU) 2019/2088. SMEs listed on regulated markets should, however, be provided with sufficient time to

prepare for the application of the requirement to report sustainability information, due to their smaller size and more limited resources, and taking account of the difficult economic circumstances created by the COVID-19 pandemic. They should also be given the possibility to report according to standards that are proportionate to the capacities and resources of SMEs. Non-listed SMEs can also choose to use these proportionate standards on a voluntary basis. The SME standards will set a reference for undertakings that are within the scope of the Directive regarding the level of sustainability information that they could reasonably request from SME suppliers and clients in their value chains.

- (19) Directive 2004/109/EC of the European Parliament and of the Council<sup>49</sup> applies to all undertakings with securities listed on regulated markets. In order to ensure that all undertakings with securities listed on regulated markets, including third country issuers, fall under the same sustainability reporting requirements, Directive 2004/109/EC should contain the necessary cross-references to any requirement on sustainability reporting in the annual financial report.
- (20) Article 23(4), first subparagraph, point (i), and Article 23(4), fourth subparagraph of Directive 2004/109/EC empower the Commission to adopt measures to set up a mechanism for the determination of equivalence of information required under the Directive, and for the establishment of general equivalence criteria regarding accounting standards, respectively. Article 23(4), third subparagraph, of Directive 2004/109/EC also empowers the Commission to take the necessary decisions on the equivalence of accounting standards that are used by third-country issuers. In order to reflect the inclusion of the sustainability requirements in Directive 2004/109/EC, the Commission should be empowered to establish a mechanism for the determination of equivalence of sustainability reporting standards applied by third-country issuers of securities. For the same reason, the Commission should also be empowered to take the necessary decisions on the equivalence of sustainability reporting standards that are used by third-country issuers. Those amendments will ensure consistent equivalence regimes for sustainability reporting obligations and for financial reporting obligations regarding the annual financial report.
- (21) Articles 19a(3) and 29a(3) of Directive 2013/34/EU currently exempt all subsidiary undertakings from the obligation to report non-financial information where such undertakings and their subsidiary undertakings are included in the consolidated management report of their parent undertaking, provided this includes the required non-financial information. It is necessary, however to ensure that sustainability information is easily accessible for users, and to bring transparency about which is the parent undertaking of the exempted subsidiary undertaking which is reporting at consolidated level. It is therefore necessary to require those subsidiary undertakings to publish the consolidated management report of their parent undertaking and to include a reference in their management report to the fact that they are exempted from reporting sustainability information. That exemption should also apply where the parent undertaking reporting at consolidated level is a third country undertaking reporting sustainability information in accordance with the requirements of this Directive or in a manner equivalent to EU sustainability reporting standards.

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<sup>49</sup> Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

- (22) Article 23 of Directive 2013/34/EU exempts parent undertakings from the obligation to prepare consolidated financial statements and a consolidated management report where those undertakings are subsidiaries of another parent undertaking that complies with that obligation. It should be specified, however, that the exemption regime for consolidated financial statements and consolidated management reports operates independently from the exemption regime for consolidated sustainability reporting. An undertaking can therefore be exempted from consolidated financial reporting obligations but not exempted from consolidated sustainability reporting obligations where its ultimate parent prepares consolidated financial statements and consolidated management reports in accordance with Union law, or in accordance with equivalent requirements if the undertaking is established in a third country, but does not prepare consolidated sustainability reporting in accordance with EU law, or in accordance with equivalent requirements if the undertaking is established in a third country.
- (23) Credit institutions and insurance undertakings play a key role in the transition towards a fully sustainable and inclusive economic and financial system in line with the European Green Deal. They can have significant positive and negative impacts via their lending, investment and underwriting activities. Credit institutions and insurance undertakings other than those that are required to comply with Directive 2013/34/EU, including cooperatives and mutual undertakings, should therefore be subject to sustainability reporting requirements provided that they meet certain size criteria. Users of that information would thus be enabled to assess both the impacts of these undertakings on society and the environment and the risks arising from sustainability matters that these undertakings could face. To ensure coherence with the reporting requirements of Council Directive 86/635/EEC<sup>50</sup> on the annual accounts and consolidated accounts of banks and other financial institutions, sustainability reporting Member States may choose not to apply sustainability reporting requirements to credit institutions listed in Article 2(5) of Directive 2013/36/EU of the European Parliament and of the Council<sup>51</sup>.
- (24) The list of sustainability matters on which undertakings are required to report should be as coherent as possible with the definition of ‘sustainability factors’ laid down in Regulation (EU) 2019/2088. That list should also correspond to the needs and expectations of users and undertakings themselves, who often use the terms ‘environmental’, ‘social’ and ‘governance’ as a means to categorise the three main sustainability matters. The list of sustainability factors laid down in Regulation (EU) 2019/2088 does not explicitly include governance matters. The definition of sustainability matters in Directive 2013/34/EU should therefore be based on the definition of ‘sustainability factors’ laid down in Regulation (EU) 2019/2088, but with the addition of governance matters.
- (25) Articles 19a and 29a of Directive 2013/34/EU require reporting not only on information ‘to the extent necessary for an understanding of the undertaking's development, performance, position’, but also on information necessary for an understanding of the impact of the undertaking’s activities on environmental, social

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<sup>50</sup> Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1).

<sup>51</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

and employee matters, respect for human rights, anti-corruption and bribery matters. Those articles therefore require undertakings to report both on how various sustainability matters affect the undertaking, and on the impacts of the activities of the undertaking on people and the environment. That is referred to as the double-materiality perspective, in which the risks to the undertaking and the impacts of the undertaking each represent one materiality perspective. The fitness check on corporate reporting shows that those two perspectives are often not well understood or applied. It is therefore necessary to clarify that undertakings should consider each materiality perspective in its own right, and should disclose information that is material from both perspectives as well as information that is material from only one perspective.

- (26) Articles 19a(1) and 29a(1) of Directive 2013/34/EU require undertakings to disclose information about five reporting areas: business model, policies (including due diligence processes implemented), the outcome of those policies, risks and risk management, and key performance indicators relevant to the business. Article 19a(1) of Directive 2013/34/EU does not contain explicit references to other reporting areas that users of information consider relevant, some of which align with disclosures included in international frameworks, including the recommendations of the Task Force on Climate-related Financial Disclosures. Disclosure requirements should be specified in sufficient detail to ensure that undertakings report information on their resilience to risks related to sustainability matters. In addition to the reporting areas identified in Articles 19a(1) and 29a(1) of Directive 2013/34/EU, undertakings should therefore be required to disclose information about their business strategy and the resilience of the business model and strategy to risks related to sustainability matters, any plans they may have to ensure that their business model and strategy are compatible with the transition to a sustainable and climate-neutral economy; whether and how their business model and strategy take account of the interests of stakeholders; any opportunities for the undertaking arising from sustainability matters; the implementation of the aspects of the business strategy which affect, or are affected by sustainability matters; any sustainability targets set by the undertaking and the progress made towards achieving them; the role of the board and management with regard to sustainability matters; the principal actual and potential adverse impacts connected with the undertaking's activities; and how the undertaking has identified the information that they report on. Once the disclosure of elements such as targets and the progress towards achieving them is required, the separate requirement to disclose the outcomes of policies is no longer necessary.
- (27) To ensure consistency with international instruments such as the UN Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance for Responsible Business Conduct, the due diligence disclosure requirements should be specified in greater detail than is the case in Article 19a(1), point (b), and Article 29a(1), point (b) of Directive 2013/34/EU. Due diligence is the process that undertakings carry out to identify, prevent, mitigate and remediate the principal actual and potential adverse impacts connected with their activities and identifies how they address those adverse impacts. Impacts connected with an undertaking's activities include impacts directly caused by the undertaking, impacts to which the undertaking contributes, and impacts which are otherwise linked to the undertaking's value chain. The due diligence process concerns the whole value chain of the undertaking including its own operations, its products and services, its business relationships and its supply chains. In alignment with the UN Guiding Principles on Business and Human Rights, an actual or potential adverse impact is to be considered principal where it measures among the greatest impacts connected with the undertaking's activities based on: the

gravity of the impact on people or the environment; the number of individuals that are or could be affected, or the scale of damage to the environment; and the ease with which the harm could be remediated, restoring the environment or affected people to their prior state.

- (28) Directive 2013/34/EU does not require the disclosure of information on intangibles other than intangible assets recognised in the balance sheet. It is widely recognised that information on intangible assets and other intangible factors, including internally-generated intangibles, is underreported, impeding the proper assessment of an undertaking's development, performance and position and monitoring of investments. To enable investors to better understand the increasing gap between the accounting book value of many undertakings and their market valuation, which is observed in many sectors of the economy, adequate reporting on intangibles should be required. It is therefore necessary to require undertakings to disclose information on intangibles other than intangible assets recognised in the balance sheet, including intellectual capital, human capital, including skills development, and social and relationship capital, including reputation capital. Information on intangibles should also include information related to research and development.
- (29) Articles 19a(1) and 29a(1) of Directive 2013/34/EU do not specify whether the information to be reported is to be forward looking or information about past performance. There is currently a lack of forward-looking disclosures, which users of sustainability information especially value. Articles 19a and 29a of Directive 2013/34/EU should therefore specify that the sustainability information reported shall include forward-looking and retrospective, and both qualitative and quantitative information. Reported sustainability information should also take into account short, medium and long-term time horizons and contain information about the undertaking's whole value chain, including its own operations, its products and services, its business relationships, and its supply chain, as appropriate. Information about the undertaking's whole value chain would include information related to its value chain within the EU and information that covers third countries if the undertaking's value chain extends outside the EU.
- (30) Articles 19a(1) and 29a(1) of Directive 2013/34/EU require undertakings to include in their non-financial reporting references to, and additional explanations of, amounts reported in the annual financial statements. Those Articles do, however, not require undertakings to make references to other information in the management report or to add additional explanations to that information. There is currently thus a lack of consistency between non-financial information reported and the rest of the information disclosed in the management report. It is necessary to lay down clear requirements in this regard.
- (31) Articles 19a(1) and 29a(1) of Directive 2013/34/EU require undertakings to provide a clear and reasoned explanation for not pursuing policies in relation to one or more of the matters listed, where the undertaking does not do so. The different treatment of disclosures on the policies that undertakings may have, compared to the other reporting areas included in those articles, has created confusion among reporting undertakings and has not helped to improve the quality of the reported information. Therefore, there is no need to maintain this different treatment of policies in the Directive. The standards will determine what information needs to be disclosed in relation to each of the reporting areas mentioned in Articles 19a and 29a.



- (32) Undertakings under the scope of Articles 19a(1) and 29a(1) of Directive 2013/34/EU may rely on national, Union-based or international reporting frameworks, and where they do so, they have to specify which frameworks they relied upon. However, Directive 2013/34/EU does not require undertakings to use a common reporting framework or standard, and it does not prevent undertakings from choosing not to use any reporting framework or standards at all. As required by Article 2 of Directive 2014/95/EU, the Commission published in 2017 non-binding guidelines for undertakings under the scope of that Directive<sup>52</sup>. In 2019, the Commission published additional guidelines, specifically on reporting climate-related information<sup>53</sup>. The climate reporting guidelines explicitly incorporated the recommendations of the Task Force on Climate-related Financial Disclosures. Available evidence indicates that those non-binding guidelines did not have a significant impact on the quality of non-financial reporting by undertakings under the scope of Articles 19a and 29a of Directive 2013/34/EU. The voluntary nature of the guidelines means that undertakings are free to apply them or not. The guidelines can therefore not ensure on their own the comparability of information disclosed by different undertakings or the disclosure of all information that users consider relevant. That is why there is a need for mandatory common reporting standards to ensure that information is comparable and that all relevant information is disclosed. Building on the double-materiality principle, standards should cover all information that is material to users. Common reporting standards are also necessary to enable the audit and digitalisation of sustainability reporting and to facilitate its supervision and enforcement. The development of mandatory common sustainability reporting standards is necessary to progress to a situation in which sustainability information has a status comparable to that of financial information.
- (33) No existing standard or framework satisfies the Union's needs for detailed sustainability reporting by itself. Information required by Directive 2013/34/EU needs to cover information relevant from each of the materiality perspectives, needs to cover all sustainability matters and needs to be aligned, where appropriate, with other obligations under Union law to disclose sustainability information, including obligations laid down in Regulation (EU) 2020/852 and Regulation (EU) 2019/2088. In addition, mandatory sustainability reporting standards for Union undertakings must be commensurate with the level of ambition of the European Green Deal and the Union's climate-neutrality objective for 2050. It is therefore necessary to empower the Commission to adopt Union sustainability reporting standards, enabling their rapid adoption and ensuring that the content of sustainability reporting standards are consistent with the Union's needs.
- (34) The European Financial Reporting Advisory Group (EFRAG) is a non-profit association established under Belgian law that serves the public interest by providing advice to the Commission on the endorsement of international financial reporting standards. EFRAG has established a reputation as a European centre of expertise on corporate reporting, and is well placed to foster coordination between European sustainability reporting standards and international initiatives that seek to develop standards that are consistent across the world. In March 2021, a multi-stakeholder task

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<sup>52</sup> Communication from the Commission *Guidelines on non-financial reporting (methodology for reporting non-financial information)* (C/2017/4234).

<sup>53</sup> Communication from the Commission *Guidelines on non-financial reporting: Supplement on reporting climate-related information* (C/2019/4490).

force set up by EFRAG published recommendations for the possible development of sustainability reporting standards for the European Union. Those recommendations contain proposals to develop a coherent and comprehensive set of reporting standards, covering all sustainability matters from a double-materiality perspective. Those recommendations also contain a detailed roadmap for developing such standards, and proposals for mutually reinforcing cooperation between global standard-setting initiatives and standard-setting initiatives of the European Union. In March 2021, the EFRAG President published recommendations for possible governance changes to EFRAG if it were to be asked to develop technical advice about sustainability reporting standards. These recommendations include offsetting up within EFRAG a new sustainability reporting pillar while not significantly modifying the existing financial reporting pillar. When adopting sustainability reporting standards, the Commission should take account of technical advice that EFRAG will develop. In order to ensure high-quality standards that contribute to the European public good and meet the needs of undertakings and of users of the information reported, EFRAG's technical advice should be developed with proper due process, public oversight and transparency, accompanied by cost benefit analyses, and be developed with the expertise of relevant stakeholders. To ensure that Union sustainability reporting standards take account of the views of the Member States of the Union, before adopting the standards the Commission should consult the Member State Expert Group on Sustainable Finance referred to in Article 24 of Regulation (EU) 2020/852 on EFRAG's technical advice. The European Securities and Markets Authority (ESMA) plays a role in drafting regulatory technical standards pursuant to Regulation (EU) 2019/2088 and there needs to be coherence between those regulatory technical standards and sustainability reporting standards. According to Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>54</sup>, ESMA also plays a role in promoting supervisory converge in the enforcement of corporate reporting by issuers whose securities are listed on EU regulated markets and who will be required to use these sustainability reporting standards. Therefore, ESMA should be required to provide an opinion on EFRAG's technical advice. This opinion should be provided within two months from the date of receipt of the request from the Commission. In addition, the Commission should consult the European Banking Authority, the European Insurance and Occupational Pensions Authority, the European Environment Agency, the European Union Agency for Fundamental Rights, the European Central Bank, the Committee of European Auditing Oversight Bodies and the Platform on Sustainable Finance to ensure that the sustainability reporting standards are coherent with relevant Union policy and legislation. Where any of those bodies decide to submit an opinion, they shall do so within two months from the date of being consulted by the Commission.

- (35) Sustainability reporting standards should be coherent with other Union legislation. Those standards should in particular be aligned with the disclosure requirements laid down in Regulation (EU) 2019/2088, and they should take account of underlying indicators and methodologies set out in the various delegated acts adopted pursuant to Regulation (EU) 2020/852, disclosure requirements applicable to benchmark administrators pursuant to Regulation (EU) 2016/1011 of the European Parliament and

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<sup>54</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

of the Council<sup>55</sup>, the minimum standards for the construction of EU climate transition benchmarks and EU Paris-aligned benchmarks; and of any work carried out by the European Banking Authority in the implementation of the Pillar III disclosure requirements of Regulation (EU) No 575/2013. Standards should take account of Union environmental legislation, including Directive 2003/87/EC of the European Parliament and of the Council<sup>56</sup> and Regulation (EC) No 1221/2009 of the European Parliament and of the Council<sup>57</sup>, and should take account of Commission Recommendation 2013/179/EU<sup>58</sup> and its annexes, and their updates. Other relevant Union legislation, including Directive 2010/75/EU of the European Parliament and of the Council<sup>59</sup>, and requirements laid down in Union law for undertakings as regards directors' duties and due diligence, should also be taken into account.

- (36) Sustainability reporting standards should take account of the Commission guidelines on non-financial reporting<sup>60</sup> and the Commission guidelines on reporting climate-related information<sup>61</sup>. They should also take account of other reporting requirements in Directive 2013/34/EU not directly related to sustainability, with the aim of providing the users of the reported information with a better understanding of the development, performance, position and impact of the undertaking, by maximising the links between the sustainability information and other information reported in accordance with Directive 2013/34/EU.
- (37) Sustainability reporting standards should be proportionate, and should not impose unnecessary administrative burden on companies that are required to use them. In order to minimise disruption for undertakings that already report sustainability information, sustainability reporting standards should take account of existing standards and frameworks for sustainability reporting and accounting where appropriate. Those include the Global Reporting Initiative, the Sustainability Accounting Standards Board, the International Integrated Reporting Council, the International Accounting Standards Board, the Task Force on Climate-related Financial Disclosures, the Carbon Disclosure Standards Board, and CDP (formerly the Carbon Disclosure Project). Standards of the European Union should take account of any sustainability reporting standards developed under the auspices of International Financial Reporting Standards Foundation. To avoid unnecessary regulatory fragmentation that may have negative consequences for undertakings operating

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<sup>55</sup> Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).

<sup>56</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

<sup>57</sup> Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (OJ L 342, 22.12.2009, p. 1).

<sup>58</sup> Commission Recommendation 2013/179/EU of 9 April 2013 on the use of common methods to measure and communicate the life cycle environmental performance of products and organisations (OJ L 124, 4.5.2013, p. 1).

<sup>59</sup> Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

<sup>60</sup> 2017/C 215/01.

<sup>61</sup> 2019/C 209/01.

globally, European standards should contribute to the process of convergence of sustainability reporting standards at global level.

- (38) In its communication on the European Green Deal, the European Commission committed to support businesses and other stakeholders in developing standardised natural capital accounting practices within the Union and internationally, with the aim of ensuring appropriate management of environmental risks and mitigation opportunities, and reduce related transaction costs. The Transparent Project sponsored under the LIFE programme is developing the first natural capital accounting methodology, which will make existing methods easier to compare and more transparent while lowering the threshold for companies to adopt and use the systems in support of future-proofing their business. The Natural Capital Protocol is also an important reference in this field. While natural capital accounting methods serve principally to strengthen internal management decisions, they should be duly considered when establishing sustainability reporting standards. Some natural capital accounting methodologies seek to assign a monetary value to the environmental impacts of companies' activities, which may help users to better understand those impacts. It is therefore appropriate that sustainability reporting standards should be able to include monetised indicators of sustainability impacts if that is deemed necessary.
- (39) Sustainability reporting standards should also take account of internationally recognised principles and frameworks on responsible business conduct, corporate social responsibility, and sustainable development, including the UN Sustainable Development Goals, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, the OECD Due Diligence Guidance for Responsible Business Conduct and related sectoral guidelines, the UN Global Compact, the Tripartite Declaration of Principles of the International Labour Organisation concerning Multinational Enterprises and Social Policy, the ISO 26000 standard on social responsibility, and the UN Principles for Responsible Investment.
- (40) It should be ensured that the information reported by undertakings in accordance with the sustainability reporting standards meet the needs of users. The reporting standards should therefore specify the information that undertakings are to disclose on all major environmental factors, including their impacts and dependencies on climate, air, land, water and biodiversity. Regulation (EU) 2020/852 provides a classification of the environmental objectives of the Union. For reasons of coherence, it is appropriate to use a similar classification to identify the environmental factors that should be addressed by sustainability reporting standards. The reporting standards should consider and specify any geographical or other contextual information that undertakings should disclose to provide an understanding of their principal impacts on sustainability matters and the principal risks to the undertaking arising from sustainability matters.
- (41) With regard to climate-related information, users are interested in knowing about undertakings' physical and transition risks, and about their resilience to different climate scenarios. They are also interested in the level and scope of greenhouse gas emissions and removals attributed to the undertaking, including the extent to which the undertaking uses offsets and the source of those offsets. Achieving a climate neutral economy requires the alignment of greenhouse gas accounting and offset standards. Users need reliable information regarding offsets that addresses concerns regarding possible double-counting and overestimations, given the risks to the achievement of climate-related targets that double-counting and overestimations can create. The



reporting standards should therefore specify the information undertakings should report with regard to those matters.

- (42) Achieving a climate neutral and circular economy and a toxic-free environment requires the full mobilisation of all economic sectors. Reducing energy use and increasing energy efficiency is key in this respect as energy is used across supply chains. Energy aspects should therefore be duly considered in sustainability reporting standards, in particular in relation to environmental matters.
- (43) Sustainability reporting standards should specify the information that undertakings should disclose on social factors, including employee factors and human rights. Such information should cover the impacts of undertakings on people, including on human health. The information that undertakings disclose about human rights should include information about forced labour in their value chains where relevant. Reporting standards that address social factors should specify the information that undertakings should disclose with regard to the principles of the European Pillar of Social Rights that are relevant to businesses, including equal opportunities for all and working conditions. The European Pillar of Social Rights Action Plan adopted in March 2021 calls for stronger requirements on undertakings to report on social issues. The reporting standards should also specify the information that undertakings should disclose with regard to the human rights, fundamental freedoms, democratic principles and standards established in the International Bill of Human Rights and other core UN human rights conventions, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, the fundamental conventions of the International Labour Organisation, and the Charter of Fundamental Rights of the European Union.
- (44) Users need information about governance factors, including information on the role of an undertaking's administrative, management and supervisory bodies, including with regard to sustainability matters, the composition of such bodies, and an undertaking's internal control and risk management systems, including in relation to the reporting process. Users also need information about undertakings' corporate culture and approach to business ethics, including anti-corruption and anti-bribery, and about their political engagements, including lobbying activities. Information about the management of the undertaking and the quality of relationships with business partners, including payment practices relating to the date or period for payment, the rate of interest for late payment or the compensation for recovery costs referred to in Directive 2011/7/EU of the European Parliament and of the Council<sup>62</sup> on late payment in commercial transactions, helps users to understand an undertaking's risks as well as its impacts on sustainability matters. Every year, thousands of businesses, especially SMEs, suffer administrative and financial burdens because they are paid late, or not at all. Ultimately, late payments lead to insolvency and bankruptcy, with destructive effects on entire value chains. Increasing information about payment practices should empower other undertakings to identify prompt and reliable payers, detect unfair payment practices, access information about the businesses they trade with, and negotiate fairer payment terms.
- (45) The reporting standards should promote a more integrated view of all the information published by undertakings in the management report to provide users of that

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<sup>62</sup> Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (OJ L 48, 23.2.2011, p. 1).



information with a better understanding of the development, performance, position and impact of the undertaking. Those standards should distinguish as necessary between information that undertakings should disclose when reporting at individual level and the information that undertakings should disclose when reporting at consolidated level. Those standards should also contain guidance for undertakings on the process carried out to identify the sustainability information that should be included in the management report.

- (46) Undertakings in the same sector are often exposed to similar sustainability-related risks, and they often have similar impacts on society and the environment. Comparisons between undertakings in the same sector are especially valuable to investors and other users of sustainability information. Sustainability reporting standards adopted by the Commission should therefore specify both information that undertakings in all sectors should disclose and information that undertakings should disclose depending on their sector of activity. Standards should also take account of the difficulties that undertakings may encounter in gathering information from actors throughout their value chain, especially from SME suppliers and from suppliers in emerging markets and economies.
- (47) To meet the information needs from users in a timely manner, and in particular given the urgency to meet the information needs of financial market participants subject to the requirements laid down in the delegated acts adopted pursuant to Article 4, paragraphs 6 and 7 of Regulation (EU) 2019/2088, the Commission should adopt a first set of reporting standards by 31 October 2022. That set of reporting standards should specify the information that undertakings should disclose with regard to all reporting areas and sustainability matters, and that financial market participants need to comply with the disclosure obligations laid down in Regulation (EU) 2019/2088. The Commission should adopt a second set of reporting standards at the latest by 31 October 2023, specifying complementary information that undertakings should disclose about sustainability matters and reporting areas where necessary, and information that is specific to the sector in which an undertaking operates. The Commission should review the standards every 3 years to take account of relevant developments, including the development of international standards.
- (48) Directive 2013/34/EU does not require that the financial statements or the management report are provided in a digital format, which hinders the findability and usability of the reported information. Users of sustainability information increasingly expect such information to be findable and machine-readable in digital formats. Digitalisation creates opportunities to exploit information more efficiently and holds the potential for significant cost savings for both users and undertakings. Undertakings should therefore be required to prepare their financial statements and their management report in XHTML format in accordance with Article 3 of Commission Delegated Regulation (EU) 2019/815,<sup>63</sup> and to mark-up sustainability information, including the disclosures required by Article 8 of Regulation (EU) 2020/852, in accordance with that Delegated Regulation. A digital taxonomy to the Union sustainability reporting standards will be necessary to allow for the information reported to be tagged in accordance with those standards. These requirements should feed into the work on digitalisation announced by the Commission in its

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<sup>63</sup> Commission Delegated Regulation (EU) 2018/815 of 17 December 2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on the specification of a single electronic reporting format (OJ L 143, 29.5.2019, p. 1).

Communication *A European strategy for data*<sup>64</sup> and in the *Digital Finance Strategy for the EU*.<sup>65</sup> These requirements also complement the creation of a European single access point for public corporate information as envisaged in the capital markets union action plan, which also considers the need for structured data.

- (49) To allow for the inclusion of the reported sustainability information in the European single access point, Member States should ensure that undertakings publish the duly approved annual financial statements and the management report in the prescribed electronic format, and ensure that management reports containing sustainability reporting are made available, without delay following their publication, to the relevant officially appointed mechanism referred to in Article 21(2) of Directive 2004/109/EC.
- (50) Article 19a(4) of Directive 2013/34/EU enables Member States to exempt undertakings from including in the management report the non-financial statement required under Article 19a(1). Member States may do so where the undertaking concerned prepares a separate report that is published together with the management report in accordance with Article 30 of that Directive, or where that report is made publicly available on the undertaking's website within a reasonable period of time not exceeding 6 months, after the balance sheet date, and is referred to in the management report. The same possibility exists for the consolidated non-financial statement referred to in Article 29(a)(4) of Directive 2013/34/EU. Twenty Member States have used that option. The possibility to publish a separate report hinders, however, the availability of information that connects financial and information on sustainability matters. It also hinders the findability and accessibility of information for users, especially investors, who are interested in both financial and sustainability information. Possible different publication times for financial and sustainability information exacerbate this problem. Publication in a separate report can also give the impression, internally and externally, that sustainability information belongs to a category of less relevant information, which can impact negatively on the perceived reliability of the information. Undertakings should therefore report sustainability information in the management report and Member States should no longer be allowed to exempt undertakings from the obligation to include in the management report information on sustainability matters. Such obligation also helps to clarify the role of national competent authorities in supervising sustainability reporting, as part of the management report, in accordance with Directive 2004/109/EC. In addition, undertakings required to report sustainability information should in no case be exempted from the obligation to publish the management report as it is important to ensure that sustainability information is publically available.
- (51) Article 20 of Directive 2013/34/EU requires undertakings with securities listed on regulated markets to include a corporate governance statement in their management report, which has to contain among other information a description of the diversity policy applied by the undertaking in relation to its administrative, management and supervisory bodies. Article 20 of Directive 2013/34/EU leaves flexibility to undertakings to decide what aspects of diversity they report on. It does not explicitly oblige undertakings to include information on any particular aspect of diversity. In order progress towards a more gender-balanced participation in economic decision-making, it is necessary to ensure that undertakings with securities listed on regulated markets always report on their gender diversity policies and the implementation

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<sup>64</sup> <https://ec.europa.eu/digital-single-market/en/european-strategy-data>

<sup>65</sup> [https://ec.europa.eu/info/publications/200924-digital-finance-proposals\\_en](https://ec.europa.eu/info/publications/200924-digital-finance-proposals_en)

thereof. However, to avoid unnecessary administrative burden, those undertakings should have the possibility to report some of the information required by Article 20 of Directive 2013/34/EU alongside other sustainability-related information.

- (52) Article 33 of Directive 2013/34/EU requires Member States to ensure that the members of the administrative, management and supervisory bodies of an undertaking have collective responsibility for ensuring that the (consolidated) annual financial statements, the (consolidated) management report and the (consolidated) corporate governance statement are drawn up and published in accordance with the requirements of that Directive. That collective responsibility should be extended to the digitalisation requirements laid down in Delegated Regulation (EU) 2019/815, to the requirement to comply with Union sustainability reporting standards and to the requirement to mark up sustainability reporting.
- (53) The assurance profession distinguishes between limited and reasonable assurance engagements. The conclusion of a limited assurance engagement is usually provided in a negative form of expression by stating that no matter has been identified by the practitioner to conclude that the subject matter is materially misstated. The auditor performs fewer tests than in a reasonable assurance engagement. The amount of work for a limited assurance engagement is therefore less than for reasonable assurance. The work effort in a reasonable assurance engagement entails extensive procedures including consideration of internal controls of the reporting undertaking and substantive testing, and is therefore significantly higher than in a limited assurance engagement. The conclusion of this type of engagement is usually provided in a positive form of expression and states an opinion on the measurement of the subject matter against previously defined criteria. Article 19a(5) and Article 29a(5) of Directive 2013/34/EU require Member States to ensure that the statutory auditor or audit firm checks whether the non-financial statement or the separate report has been provided. It does not require that an independent provider of assurance services verifies the information, although it allows Member States to require such verification where they wish to. The absence of an assurance requirement on sustainability reporting, in contrast to the requirement for the statutory auditor to perform a reasonable assurance engagement on financial statements, would threaten the credibility of the sustainability information disclosed, thus failing to meet the needs of the intended users of that information. Although the objective is to have a similar level of assurance for financial and sustainability reporting, the absence of a commonly agreed standard for the assurance of sustainability reporting creates the risk of different understandings and expectations of what a reasonable assurance engagement would consist of for different categories of sustainability information, especially with regard to forward looking and qualitative disclosures. Therefore, a progressive approach to enhance the level of the assurance required for sustainability information should be considered, starting with an obligation on the statutory auditor or audit firm to express an opinion about the compliance of the sustainability reporting with Union requirements based on a limited assurance engagement. This opinion should cover the compliance of the sustainability reporting with Union sustainability reporting standards, the process carried out by the undertaking to identify the information reported pursuant to the sustainability reporting standards and compliance with the requirement to mark-up sustainability reporting. The auditor should also assess whether the undertaking's reporting complies with the reporting requirements of Article 8 of Regulation (EU) 2020/852. To guarantee a common understanding and expectations of what a reasonable assurance engagement would consist of, the statutory auditor or audit firm should be required to express an opinion based on a

reasonable assurance engagement about the compliance of the sustainability reporting with Union requirements, should the Commission adopt assurance standards for reasonable assurance of sustainability reporting. This would also allow for the progressive development of the assurance market for sustainability information, and of undertakings' reporting practices. Finally, this progressive approach would phase in the increase in costs for reporting undertakings, given that reasonable assurance is more costly than limited assurance.

- (54) Statutory auditors or audit firms already verify the financial statements and the management report. The assurance of sustainability reporting by the statutory auditors or audit firms would help to ensure the connectivity between, and consistency of, financial and sustainability information, which is particularly important for by users of sustainability information. However, there is a risk of further concentration of the audit market, which could risk the independence of auditors and increase audit or assurance fees. It is therefore desirable to offer undertakings a broader choice of independent assurance service providers for the assurance of sustainably reporting. Member States should therefore be allowed to accredit independent assurance services providers in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council<sup>66</sup> to provide an opinion on sustainability reporting, which should be published together with the management report. Member States should set out requirements that ensure consistent outcomes in the assurance of sustainability reporting carried out by different assurance service providers. Therefore, all independent assurance services providers should be subject to requirements that are consistent with those set out in Directive 2006/43/EC as regards the assurance of sustainability reporting. This will also guarantee a level playing field among all persons and firms allowed by Member States to provide the opinion on the assurance of sustainability reporting, including statutory auditors. If an undertaking seeks the opinion of an accredited independent assurance services provider other than the statutory auditor on its sustainability reporting, it should not in addition need to request this opinion from the statutory auditor.
- (55) Directive 2006/43/EC of the European Parliament and of the Council<sup>67</sup> sets out rules concerning the statutory audit of annual and consolidated financial statements. It is necessary to ensure that consistent rules apply to the audit of financial statements and the assurance of sustainability reporting by the statutory auditor,. Directive 2006/43/EC should apply where the opinion on sustainability reporting is given by the statutory auditor or audit firm carrying out the statutory audit of financial statements.
- (56) The rules on the approval and recognition of statutory auditors and audit firms should ensure that statutory auditors have the necessary level of theoretical knowledge of subjects relevant to the assurance of sustainability reporting and the ability to apply such knowledge in practice. However, statutory auditors that have already been approved or recognised by a Member State should continue to be allowed to carry out statutory audits and should be allowed to carry out assurance engagements of sustainability reporting. Member States should, however, ensure that already approved

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<sup>66</sup> Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

<sup>67</sup> Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).



statutory auditors acquire the necessary knowledge in sustainability reporting and the assurance of sustainability reporting via continued professional education.

- (57) It should be ensured that the requirements imposed on auditors as regards their work on the statutory audit and the assurance of sustainability reporting are consistent. It should therefore be laid down that, where the opinion on sustainability reporting is given by the statutory auditor or audit firm carrying out the statutory audit of financial statements, the key audit partners are actively involved in conducting the assurance of sustainability reporting. When carrying out the assurance of sustainability reporting, statutory auditors should be required to devote sufficient time to the engagement and assign sufficient resources to enable them to carry out their duties appropriately. Finally, the client account record should specify the fees charged for the assurance of sustainability reporting and the audit file should include information related to the assurance of sustainability reporting.
- (58) Article 25 of Directive 2006/43/EC requires Member States to put appropriate rules in place to avoid that the fees on the statutory audit are influenced or determined by the provision of additional services to the audited entity or are based on any form of contingency. Articles 21 to 24 of that Directive also require Member States to ensure that statutory auditors carrying out statutory audits comply with the rules on professional ethics, independence, objectivity, confidentiality and professional secrecy. For reasons of coherence, it is appropriate that those rules are extended to the work carried out by statutory auditors on the assurance of sustainability reporting.
- (59) In order to provide for uniform assurance practices and high quality assurance of sustainability reporting across the Union, the Commission should be empowered to adopt sustainability assurance standards by means of delegated acts. Member States should apply national assurance standards, procedures or requirements as long as the Commission has not adopted an assurance standard covering the same subject matter. These assurance standards should set out the procedures that the auditor shall perform in order to draw its conclusions on the assurance of sustainability reporting.
- (60) Article 27 of Directive 2006/43/EC sets out rules on the statutory audit of a group of undertakings. Those rules should be extended to the assurance of consolidated sustainability reporting, where the statutory auditor performs the statutory audit.
- (61) Article 28 of Directive 2006/43/EC requires statutory auditors or audit firms to present the results of their statutory audit in an audit report. That requirement should be extended to the assurance of sustainability reporting to ensure that the results of the assurance of sustainability reporting are presented in the same audit report.
- (62) Article 29 of Directive 2006/43/EC requires Member States to set up a system of quality assurance review of statutory auditors and audit firms. To ensure that quality assurance reviews also take place for the assurance of sustainability reporting and that the persons who carry out quality assurance reviews have appropriate professional education and relevant experience in the assurance of sustainability reporting and sustainability reporting, that requirement to set up a system of quality assurance review should be extended to the assurance of sustainability reporting.
- (63) Chapter VII of Directive 2006/43/EC requires Member States to have in place an investigations and sanctions regime for statutory auditors and audit firms carrying out statutory audits. Chapter VIII of that Directive requires Member States to organise an effective system of public oversight, and to ensure that regulatory arrangements for public oversight systems permit effective cooperation at Union level in respect of



Member States' oversight activities. Those requirements should be extended to statutory auditors and audit firms that conduct assurance engagements of sustainability reporting in order to ensure the consistency of the investigations, sanctions and oversight frameworks set up for the auditor's work in the statutory audit and the assurance of sustainability reporting.

- (64) Article 37 and 38 of Directive 2006/43/EC contain rules on the appointment and dismissal of statutory auditors and audit firms carrying out statutory audits. Those rules should be extended to the assurance of sustainability reporting to ensure the consistency of the rules imposed on auditors as regards their work on the statutory audit and the assurance of sustainability reporting.
- (65) Article 39 of Directive 2006/43/EC requires Member States to ensure that each public-interest entity has an audit committee, and specifies its tasks with regard to the statutory audit. That audit committee should be assigned with certain tasks with regard to the assurance of sustainability reporting. Those tasks should include the obligation to inform the administrative or supervisory body of the audited entity of the outcome of the assurance of sustainability reporting, and to explain how the audit committee contributed to the integrity of sustainability reporting and what the role of the audit committee was in that process.
- (66) Article 45 of Directive 2006/43/EC contains requirements for registration and oversight of third-country auditors and audit entities. To ensure that a consistent framework exists for the work of auditors in both the statutory audit and the assurance of sustainability reporting, it is necessary to extend those requirements to the assurance of sustainability reporting.
- (67) Regulation (EU) No 537/2014 of the European Parliament and of the Council<sup>68</sup> applies to statutory auditors and audit firms carrying out statutory audits of public-interest entities. To ensure the independence of the statutory auditor, Article 5 of that Regulation prohibits the provision of certain non-audit services over certain time periods. That independence should also be ensured for the work of statutory auditors and audit firms carrying out statutory audits of public-interest entities on the assurance of sustainability reporting. Consulting services for the preparation of sustainability reporting should therefore be included in the list of prohibited non-audit services.
- (68) Article 14 of Regulation (EU) No 537/2014 requires statutory auditors and audit firms to inform their competent authority annually of the revenues generated from statutory audits and non-audit services of public-interest entities. Auditors and audit firms should be required to specify which revenues among the revenues from non-audit services are generated from the assurance of sustainability reporting.
- (69) According to Article 51 of Directive 2013/34/EU, the enforcement of corporate reporting by undertakings the securities of which are not listed on regulated markets is carried out by Member States. The types of sanctions are, however, not specified, which means that sanctioning regimes can vary widely between Member States, so undermining the single market. To improve sustainability reporting in the internal market and to contribute to the transition towards a fully sustainable and inclusive economic and financial system in which the benefits of growth are broadly shared in

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<sup>68</sup> Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (OJ L 158, 27.5.2014, p. 77).

accordance with the European Green Deal, Member States should provide for certain sanctions and administrative measures in the case of infringements of sustainability reporting requirements. The sanctioning regime of Directive 2013/34/EU should therefore be strengthened accordingly, whereby Member States are to provide for appropriate sanctions and administrative measures.

- (70) Article 24 of Directive 2004/109/EC assigns to national supervisors the task of enforcing compliance with corporate reporting requirements by undertakings with securities listed on regulated markets. Article 4 of that Directive specifies the content of the annual financial reports, but lacks an explicit reference to Articles 19a and 29a of Directive 2013/34/EU, which require the preparation of a (consolidated) non-financial statement. This implies that national competent authorities of some Member States have no legal mandate to supervise those non-financial statements, especially where those statements are published in a separate report, outside of the annual financial report, which Member States may currently allow. It is therefore necessary to insert into Article 4(5) of Directive 2004/109/EC a reference to sustainability reporting. It is also necessary to require that the persons responsible within the issuer confirm in the annual financial report that, to the best of their knowledge, the management report is prepared in accordance with the sustainability reporting standards. In addition, given the novel character of those reporting requirements, the European Securities and Markets Authority should issue guidelines for national competent authorities to promote convergent supervision of sustainability reporting by issuers subject to Directive 2004/109/EC.
- (71) Member States are invited to assess the impact of their transposition act on SMEs in order to ensure that they are not disproportionately affected, giving specific attention to micro-enterprises and to the administrative burden, and to publish the results of such assessments. Member States should consider introducing measures to support SMEs in applying the voluntary simplified reporting standards.
- (72) Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014 should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*  
*Amendments to Directive 2013/34/EU*

Directive 2013/34/EU is amended as follows:

- (1) in Article 1, the following paragraph 3 is added:
- ‘3. The coordination measures prescribed by Articles 19a, 19d, 29a, 30 and 33, Article 34(1), second subparagraph, point (aa), paragraphs 2 and 3 of Article 34, and Article 51 of this Directive shall also apply to the laws, regulations and administrative provisions of the Member States relating to the following undertakings regardless of their legal form:
- (a) insurance undertakings within the meaning of Article 2(1) of Council Directive 91/674/EEC\*<sup>1</sup>;
  - (b) credit institutions as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013 of the European Parliament and of the Council\*<sup>2</sup>.

Member States may choose not to apply the coordination measures referred to in the first subparagraph to the undertakings listed in Article 2(5), points (2) to (23), of Directive 2013/36/EU of the European Parliament and of the Council\*<sup>3</sup>.

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\*1 Council Directive 91/674/EEC of 19 December 1991 on the annual accounts of insurance undertakings (OJ L 374, 31.12.1991, p. 7).

\*2 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

\*3 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).’;

(2) in Article 2, the following points (17) to (20) are added:

‘(17) ‘sustainability matters’ means sustainability factors as defined in Article 2, point (24) of Regulation (EU) 2019/2088 of the European Parliament and of the Council\*<sup>4</sup>, and governance factors;

(18) ‘sustainability reporting’ means reporting information related to sustainability matters in accordance with Articles 19a, 19d and 29a of this Directive;

(19) ‘intangibles’ means non-physical resources that contribute to the undertaking’s value creation;

(20) ‘independent assurance services provider’ means a conformity assessment body accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council\*<sup>5</sup> for the specific conformity assessment activity referred to in Article 34(1), second subparagraph, point (aa) of this Directive.

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\*4 Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability- related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

\*5 Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).’;

(3) Article 19a is replaced by the following:

‘Article 19a

### **Sustainability Reporting**

1. Large undertakings and, as of 1 January 2026, small and medium-sized undertakings which are undertakings referred to in Article 2, point (1), point (a), shall include in the management report information necessary to understand the undertaking’s impacts on sustainability matters, and information necessary to understand how sustainability matters affect the undertaking’s development, performance and position.

2. The information referred to in paragraph 1 shall contain in particular:

(a) a brief description of the undertaking's business model and strategy, including:

(i) the resilience of the undertaking's business model and strategy to risks related to sustainability matters;

- (ii) the opportunities for the undertaking related to sustainability matters;
  - (iii) the plans of the undertaking to ensure that its business model and strategy are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement;
  - (iv) how the undertaking's business model and strategy take account of the interests of the undertaking's stakeholders and of the impacts of the undertaking on sustainability matters;
  - (v) how the undertaking's strategy has been implemented with regard to sustainability matters;
- (b) a description of the targets related to sustainability matters set by the undertaking and of the progress the undertaking has made towards achieving those targets;
  - (c) a description of the role of the administrative, management and supervisory bodies with regard to sustainability matters;
  - (d) a description of the undertaking's policies in relation to sustainability matters;
  - (e) a description of:
    - (i) the due diligence process implemented with regard to sustainability matters;
    - (ii) the principal actual or potential adverse impacts connected with the undertaking's value chain, including its own operations, its products and services, its business relationships and its supply chain;
    - (iii) any actions taken, and the result of such actions, to prevent, mitigate or remediate actual or potential adverse impacts;
  - (f) a description of the principal risks to the undertaking related to sustainability matters, including the undertaking's principal dependencies on such matters, and how the undertaking manages those risks;
  - (g) indicators relevant to the disclosures referred to in points (a) to (f).

Undertakings shall also disclose information on intangibles, including information on intellectual, human, and social and relationship capital.

Undertakings shall report the process carried out to identify the information that they have included in the management report in accordance with paragraph 1 and in this process they shall take account of short, medium and long-term horizons.

3. The information referred to in paragraphs 1 and 2 shall contain forward-looking and retrospective information, and qualitative and quantitative information.

Where appropriate, the information referred to in paragraphs 1 and 2 shall contain information about the undertaking's value chain, including the undertaking's own operations, products and services, its business relationships and its supply chain.

Where appropriate, the information referred to in paragraphs 1 and 2 shall also contain references to, and additional explanations of, other information included in

the management report in accordance with Article 19 and amounts reported in the annual financial statements.

Member States may allow information relating to impending developments or matters in the course of negotiation to be omitted in exceptional cases where, in the duly justified opinion of the members of the administrative, management and supervisory bodies, acting within the competences assigned to them by national law and having collective responsibility for that opinion, the disclosure of such information would be seriously prejudicial to the commercial position of the undertaking, provided that such omission does not prevent a fair and balanced understanding of the undertaking's development, performance, position and impact of its activity.

4. Undertakings shall report the information referred to in paragraphs 1 to 3 in accordance with the sustainability reporting standards referred to in Article 19b.

5. By way of derogation from Article 19a, paragraphs 1 to 4, small and medium sized undertakings referred to in Article 2, point (1), point (a), may report in accordance with the sustainability reporting standards for small and medium sized undertakings referred to in Article 19c.

6. Undertakings that comply with the requirements set out in paragraphs 1 to 4 shall be deemed to have complied with the requirement set out in the third subparagraph of Article 19(1).

7. An undertaking which is a subsidiary undertaking shall be exempted from the obligations set out in paragraphs 1 to 4 if that undertaking and its subsidiary undertakings are included in the consolidated management report of a parent undertaking, drawn up in accordance with Articles 29 and 29a. An undertaking that is a subsidiary undertaking from a parent undertaking that is established in a third country shall also be exempted from the obligations set out in paragraphs 1 to 4 where that undertaking and its subsidiary undertakings are included in the consolidated management report of that parent undertaking and where the consolidated management report is drawn up in a manner that may be considered equivalent, in accordance with the relevant implementing measures adopted pursuant to Article 23(4), point (i), of Directive 2004/109/EC of the European Parliament and of the Council\*<sup>6</sup>, to the manner required by the sustainability reporting standards referred to in Article 19b of this Directive.

The consolidated management report of the parent undertaking referred to in subparagraph 1 shall be published in accordance with Article 30, in the manner prescribed by the law of the Member State by which the undertaking that is exempted from the obligations set out in paragraphs 1 to 4 is governed.

The Member State by which the undertaking that is exempted from the obligations set out in paragraphs 1 to 4 is governed, may require that the consolidated management report referred to in the first subparagraph of this paragraph is published in an official language of the Member State or in a language customary in the sphere of international finance, and that any necessary translation into those languages is certified.

The management report of an undertaking that is exempted from the obligations set out in paragraphs 1 to 4 shall contain all of the following information:

- (a) the name and registered office of the parent undertaking that reports information at group level in accordance with Articles 29 and 29a, or in a



manner that may be considered equivalent, in accordance with the implementing measures adopted pursuant to Article 23(4), point (i) of Directive 2004/109/EC, to the manner required by the sustainability reporting standards referred to in Article 19b;

(b) the fact that the undertaking is exempted from the obligations set out in paragraphs 1 to 4 of this Article.

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\*6 Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).';

(4) the following Articles 19b, 19c and 19d are inserted:

‘Article 19b

**Sustainability reporting standards**

1. The Commission shall adopt delegated acts in accordance with Article 49 to provide for sustainability reporting standards. Those sustainability reporting standards shall specify the information that undertakings are to report in accordance with Articles 19a and 29a and, where relevant, shall specify the structure in which that information shall be reported. In particular:

- (a) by 31 October 2022, the Commission shall adopt delegated acts specifying the information that undertakings are to report in accordance with paragraphs 1 and 2 of Article 19a, and at least specifying information corresponding to the needs of financial market participants subject to the disclosure obligations of Regulation (EU) 2019/2088.
- (b) by 31 October 2023, the Commission shall adopt delegated acts specifying:
  - (i) complementary information that undertakings shall report with regard to the sustainability matters and reporting areas listed in Article 19a(2), where necessary;
  - (ii) information that undertakings shall report that is specific to the sector in which they operate.

The Commission shall, at least every three years after its date of application, review any delegated act adopted pursuant to this Article, taking into consideration the technical advice of the European Financial Reporting Advisory Group (EFRAG), and where necessary shall amend such delegated act to take into account relevant developments, including developments with regard to international standards.

2. The sustainability reporting standards referred to in paragraph 1 shall require that the information to be reported is understandable, relevant, representative, verifiable, comparable, and is represented in a faithful manner.

The sustainability reporting standards shall, taking into account the subject matter of a particular standard:

- (a) specify the information that undertakings are to disclose about environmental factors, including information about:
  - (i) climate change mitigation;

- (ii) climate change adaptation;
  - (iii) water and marine resources;
  - (iv) resource use and circular economy;
  - (v) pollution;
  - (vi) biodiversity and ecosystems;
- (b) specify the information that undertakings are to disclose about social factors, including information about:
- (i) equal opportunities for all, including gender equality and equal pay for equal work, training and skills development, and employment and inclusion of people with disabilities;
  - (ii) working conditions, including secure and adaptable employment, wages, social dialogue, collective bargaining and the involvement of workers, work-life balance, and a healthy, safe and well-adapted work environment;
  - (iii) respect for the human rights, fundamental freedoms, democratic principles and standards established in the International Bill of Human Rights and other core UN human rights conventions, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work and the ILO fundamental conventions and the Charter of Fundamental Rights of the European Union.
- (c) specify the information that undertakings are to disclose about governance factors, including information about:
- (i) the role of the undertaking's administrative, management and supervisory bodies, including with regard to sustainability matters, and their composition;
  - (ii) business ethics and corporate culture, including anti-corruption and anti-bribery;
  - (iii) political engagements of the undertaking, including its lobbying activities;
  - (iv) the management and quality of relationships with business partners, including payment practices;
  - (v) the undertaking's internal control and risk management systems, including in relation to the undertaking's reporting process.
3. When adopting delegated acts pursuant to paragraph 1, the Commission shall take account of:
- (a) the work of global standard-setting initiatives for sustainability reporting, and existing standards and frameworks for natural capital accounting, responsible business conduct, corporate social responsibility, and sustainable development;
  - (b) the information that financial market participants need to comply with their disclosure obligations laid down in Regulation (EU) 2019/2088 and the delegated acts adopted pursuant to that Regulation;
  - (c) the criteria set out in the delegated acts adopted pursuant to Regulation (EU) 2020/852\*<sup>7</sup>;

- (d) the disclosure requirements applicable to benchmarks administrators in the benchmark statement and in the benchmark methodology and the minimum standards for the construction of EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks in accordance with Commission Delegated Regulations (EU) 2020/1816\*<sup>8</sup>, (EU) 2020/1817\*<sup>9</sup> and (EU) 2020/1818\*<sup>10</sup>;
- (e) the disclosures specified in the implementing acts adopted pursuant to Article 434a of Regulation (EU) No 575/2013\*<sup>11</sup>;
- (f) Commission Recommendation 2013/179/EU\*<sup>12</sup>;
- (g) Directive 2003/87/EC of the European Parliament and of the Council\*<sup>13</sup>;
- (h) Regulation (EC) No 1221/2009 of the European Parliament and of the Council\*<sup>14</sup>.

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\*<sup>7</sup> Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

\*<sup>8</sup> Commission Delegated Regulation (EU) 2020/1816 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards the explanation in the benchmark statement of how environmental, social and governance factors are reflected in each benchmark provided and published (OJ L 406, 3.12.2020, p. 1).

\*<sup>9</sup> Commission Delegated Regulation (EU) 2020/1817 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards the minimum content of the explanation on how environmental, social and governance factors are reflected in the benchmark methodology (OJ L 406, 3.12.2020, p. 12).

\*<sup>10</sup> Commission Delegated Regulation (EU) 2020/1818 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks (OJ L 406, 3.12.2020, p. 17).

\*<sup>11</sup> Commission Implementing Regulation laying down implementing technical standards with regard to public disclosures by institutions of the information referred to in Titles II and III of Part Eight of Regulation (EU) No 575/2013 of the European Parliament and of the Council (C(2021)1595)

\*<sup>12</sup> Commission Recommendation 2013/179/EU of 9 April 2013 on the use of common methods to measure and communicate the life cycle environmental performance of products and organisations (OJ L 124, 4.5.2013, p. 1).

\*<sup>13</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

\*<sup>14</sup> Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (OJ L 342, 22.12.2009, p. 1).

### *Article 19c*

#### **Sustainability reporting standards for SMEs**

The Commission shall adopt delegated acts in accordance with Article 49 to provide for sustainability reporting standards proportionate to the capacities and characteristics of small and medium-sized undertakings. Those sustainability reporting standards shall specify which information referred to in Articles 19a and 29a small and medium-sized undertakings referred to in Article 2, point (1)(a) shall report. They shall take into account the criteria set out in Article 19b, paragraphs 2 and 3. They shall also, where relevant, specify the structure in which that information shall be reported.

The Commission shall adopt those delegated acts at the latest by 31 October 2023.

### Single electronic reporting format

1. Undertakings subject to Article 19a shall prepare their financial statements and their management report in a single electronic reporting format in accordance with Article 3 of Commission Delegated Regulation (EU) 2019/815\*<sup>15</sup> and shall mark-up their sustainability reporting, including the disclosures laid down in Article 8 of Regulation (EU) 2020/852, in accordance with that Delegated Regulation.
2. Undertakings subject to Article 29a shall prepare their consolidated financial statements and their consolidated management report in a single electronic reporting format in accordance with Article 3 of Delegated Regulation (EU) 2019/815 and shall mark-up sustainability reporting, including the disclosures laid down in Article 8 of Regulation (EU) 2020/852.

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\*<sup>15</sup> Commission Delegated Regulation (EU) 2019/815 of 17 December 2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on the specification of a single electronic reporting format (OJ L 143, 29.5.2019, p. 1).;

- (5) Article 20(1) is amended as follows:
  - (a) point (g) is replaced by the following:

‘(g) a description of the diversity policy applied in relation to the undertaking's administrative, management and supervisory bodies with regard to gender and other aspects such as, age, or educational and professional backgrounds, the objectives of that diversity policy, how it has been implemented and the results in the reporting period. If no such policy is applied, the statement shall contain an explanation as to why this is the case.’;
  - (b) the following subparagraph is added:

‘Undertakings subject to Article 19a may comply with the obligation laid down in points (c), (f) and (g) of the first subparagraph of this Article where they include the information required under those points as part of their sustainability reporting.’;
- (6) Article 23 is amended as follows:
  - (a) in paragraph 4, point (b) is replaced by the following:

‘(b) the consolidated financial statements referred to in point (a) and the consolidated management report of the larger body of undertakings are drawn up by the parent undertaking of that body, in accordance with the law of the Member State by which that parent undertaking is governed, in accordance with this Directive, with the exception of the requirements laid down in Article 29a, or in accordance with international accounting standards adopted in accordance with Regulation (EC) No 1606/2002.’;
  - (b) in paragraph 8, point (b)(i) is replaced by the following:

‘(i) in accordance with this Directive, with the exception of the requirements laid down in Article 29a.’;
  - (c) in paragraph 8, (b)(iii) is replaced by the following:

‘(iii) in a manner equivalent to consolidated financial statements and consolidated management reports drawn up in accordance with this Directive, with the exception of the requirements laid down in Article 29a, or’;

(7) Article 29a is replaced by the following:

*Article 29a*

**Consolidated sustainability reporting**

1. Parent undertakings of a large group shall include in the consolidated management report information necessary to understand the group's impacts on sustainability matters, and information necessary to understand how sustainability matters affect the group's development, performance and position.

2. The information referred to in paragraph 1 shall contain in particular:

(a) a brief description of the group's business model and strategy, including:

(i) the resilience of the group's business model and strategy to risks related to sustainability matters;

(ii) the opportunities for the group related to sustainability matters;

(iii) the plans of the group to ensure that the group's business model and strategy compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement;

(iv) how the group's business model and strategy take account of the interests of the group's stakeholders and of the impacts of the group on sustainability matters;

(v) how the group's strategy has been implemented with regard to sustainability matters;

(b) a description of the targets related to sustainability matters set by the group and of the progress of the undertaking towards achieving them;

(c) a description of the role of the administrative, management and supervisory bodies with regard to sustainability matters;

(d) a description of the group's policies in relation to sustainability matters;

(e) a description of:

(i) the due diligence process implemented with regard to sustainability matters;

(ii) the principal actual or potential adverse impacts connected with the group's value chain, including its own operations, its products and services, its business relationships and its supply chain;

(iii) any actions taken, and the result of such actions, to prevent, mitigate or remediate actual or potential adverse impacts;

(f) a description of the principal risks to the group related to sustainability matters, including the group's principal dependencies on such factors, and how the group manages those risks;



- (g) indicators relevant to the relevant to the disclosures referred to in points (a) to (f).

Parent undertakings shall also report information on intangibles, including information on intellectual, human, and social and relationship capital.

Parent undertakings shall describe the process carried out to identify the information that they have included in the consolidated management report in accordance with this Article.

3. The information referred to in paragraphs 1 and 2 shall contain forward-looking information and information about past performance, and qualitative and quantitative information. This information shall take into account short, medium and long-term time horizons, where appropriate.

The information referred to in paragraphs 1 and 2 shall include information about the group's value chain, including its own operations, its products and services, its business relationships and its supply chain, where appropriate.

The information referred to in paragraphs 1 and 2 shall also, where appropriate, include references to, and additional explanations of, other information included in the consolidated management report in accordance with Article 29 of this Directive and amounts reported in the consolidated financial statements.

Member States may allow information relating to impending developments or matters in the course of negotiation to be omitted in exceptional cases where, in the duly justified opinion of the members of the administrative, management and supervisory bodies, acting within the competences assigned to them by national law and having collective responsibility for that opinion, the disclosure of such information would be seriously prejudicial to the commercial position of the group, provided that such omission does not prevent a fair and balanced understanding of the group's development, performance, position and impact of its activity.

4. Parent undertakings shall report the information referred to in paragraphs 1 to 3 in accordance with the sustainability reporting standards referred to in Article 19b.

5. By way of derogation from Article 29a, paragraphs 1-4, parent undertakings that are small and medium sized undertakings referred to in Article 2, point (1), point (a), may report in accordance with the sustainability reporting standards for small and medium sized undertakings referred to in Article 19c.

6. A parent undertaking that complies with the requirements set out in paragraphs 1 to 4 shall be deemed to have complied with the requirements set out in the third subparagraph of Article 19(1), Article 19a and Article 29.

7. A parent undertaking which is also a subsidiary undertaking shall be exempted from the obligation set out in paragraphs 1 to 4 if that exempted parent undertaking and its subsidiaries are included in the consolidated management report of another undertaking, drawn up in accordance with Article 29 and this Article. A parent undertaking that is a subsidiary undertaking from a parent undertaking that is established in a third country shall also be exempted from the obligations set out in paragraphs 1 to 4 where that undertaking and its subsidiary undertakings are included in the consolidated management report of that parent undertaking and where the consolidated management report is drawn up in a manner that may be considered equivalent, in accordance with the relevant implementing measures adopted pursuant

to Article 23(4)(i) of Directive 2004/109/EC, to the manner required by the sustainability reporting standards referred to in Article 19b of this Directive.

The consolidated management report of the parent undertaking referred to in subparagraph 1 shall be published in accordance with Article 30, in the manner prescribed by the law of the Member State by which the parent undertaking that is exempted from the obligations set out in paragraphs 1 to 4 is governed.

The Member State by which the parent undertaking that is exempted from the obligations set out in paragraphs 1 to 4 is governed may require that the consolidated management report referred to in the first subparagraph of this paragraph is published in its official language or in a language customary in the sphere of international finance, and that any necessary translation into those languages is certified.

The consolidated management report of a parent undertaking that is exempted from the obligations set out in paragraphs 1 to 4 shall contain all of the following information:

(a) the name and registered office of the parent undertaking that reports information at group level in accordance with Articles 29 and this Article, or in a manner that may be considered equivalent, in accordance with the relevant implementing measures adopted pursuant to Article 23(4)(i) of Directive 2004/109/EC, to the manner required by the sustainability standards adopted pursuant to Article 19b;

(b) the fact that the undertaking is exempted from the obligations set out in paragraphs 1 to 4 of this Article.’;

(8) Article 30 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall ensure that undertakings publish within a reasonable period of time, which shall not exceed 12 months after the balance sheet date, the duly approved annual financial statements and the management report in the format prescribed by Article 19d of this Directive where applicable, together with the opinions and statement submitted by the statutory auditor or audit firm referred to in Article 34 of this Directive, as laid down by the laws of each Member State in accordance with Chapter 3 of Directive (EU) 2017/1132 of the European Parliament and of the Council\*<sup>16</sup>.’

‘Where an independent assurance services provider gives the opinion referred to in point (aa) of Article 34(1), this opinion shall be published together with the reports referred to in the first subparagraph.

Member States may, however, exempt undertakings from the obligation to publish the management report where a copy of all or part of any such report can be easily obtained upon request at a price not exceeding its administrative cost.’

‘The exemption laid down in the third subparagraph shall not apply to undertakings subject to Articles 19a and 29a.’;

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\*<sup>16</sup> Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).

(b) the following paragraph 1a is inserted:

‘1a. Member States shall ensure that management reports containing sustainability reporting drawn up by undertakings subject to Articles 19a and 29a are also made available to the relevant officially appointed mechanism referred to in Article 21(2) of Directive 2004/109/EC without delay following their publication.

Where the undertaking drawing up the management report is not subject to Directive 2004/109/EC, the relevant officially appointed mechanism shall be one of the officially appointed mechanisms of the Member State where the undertaking has its registered office.’;

(9) in Article 33, paragraph 1 is replaced by the following:

‘1. Member States shall ensure that the members of the administrative, management and supervisory bodies of an undertaking, acting within the competences assigned to them by national law, have collective responsibility for ensuring that the following documents are drawn up and published in accordance with the requirements of this Directive and, where applicable, with the international accounting standards adopted in accordance with Regulation (EC) No 1606/2002, with Delegated Regulation 2019/815, with the sustainability reporting standards referred to in Article 19b of this Directive, and with the requirements of Article 19d of this Directive:

(a) the annual financial statements, the management report and the corporate governance statement when provided separately;

(b) the consolidated financial statements, the consolidated management reports and the consolidated corporate governance statement when provided separately.’;

(10) Article 34 is amended as follows:

(a) in paragraph 1, the second subparagraph is amended as follows:

(i) point (a)(ii) is replaced by the following:

‘(ii) whether the management report has been prepared in accordance with the applicable legal requirements, excluding the requirements on sustainability reporting laid down in Article 19a;’;

(ii) the following point (aa) is inserted:

‘(aa) where applicable, express an opinion based on a limited assurance engagement as regards the compliance of the sustainability reporting with the requirements of this Directive, including the compliance of the sustainability reporting with the reporting standards adopted pursuant to Article 19b, the process carried out by the undertaking to identify the information reported pursuant to those reporting standards, and the compliance with the requirement to mark-up sustainability reporting in accordance with Article 19d, and as regards the compliance with the reporting requirements of Article 8 of Regulation (EU) 2020/852.’;

(b) paragraph 3 is replaced by the following:

‘3. Member States may allow an independent assurance services provider to express the opinion referred to in paragraph 1, second subparagraph, point (aa),

provided that it is subject to requirements that are consistent with those set out in Directive 2006/43/EC as regards the assurance of sustainability reporting as defined in Article 2(1), point (r) of that Directive.

(11) Article 49 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

‘2. The power to adopt delegated acts referred to in Article 1(2), Article 3(13), Article 46(2), Article 19b and Article 19c shall be conferred on the Commission for an indeterminate period of time.

3. The delegation of power referred to in Article 1(2), Article 3(13), Article 46(2), Article 19b and Article 19c may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of that decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.’;

(b) the following paragraph 3a is inserted:

‘3a. When adopting delegated acts pursuant to Articles 19b and 19c, the Commission shall take into consideration technical advice from EFRAG, provided such advice has been developed with proper due process, public oversight and transparency and with the expertise of relevant stakeholders, and is accompanied by cost-benefit analyses that include analyses of the impacts of the technical advice on sustainability matters.

The Commission shall consult the Member State Expert Group on Sustainable Finance referred to in Article 24 of Regulation (EU) 2020/852 on the technical advice provided by EFRAG prior to the adoption of the delegated acts referred to in Articles 19b and 19c.

The Commission shall request the opinion of the European Securities and Markets Authority on the technical advice provided by EFRAG, in particular with regard to its consistency with Regulation (EU) 2019/2088 and its delegated acts. The European Securities and Markets Authority shall provide its opinion within two months from the date of receipt of the request from the Commission.

The Commission shall also consult the European Banking Authority, the European Insurance and Occupational Pensions Authority, the European Environment Agency, the European Union Agency for Fundamental Rights, the European Central Bank, the Committee of European Auditing Oversight Bodies and the Platform on Sustainable Finance established pursuant to Article 20 of Regulation (EU) 2020/852 on the technical advice provided by EFRAG prior to the adoption of delegated acts referred to in Articles 19b and 19c. Where any of those bodies decide to submit an opinion, they shall do so within two months from the date of being consulted by the Commission.’;

(c) paragraph 5 is replaced by the following:

‘5. A delegated act adopted pursuant to Article 1(2), Article 3(13), Article 46(2), Article 19b and Article 19c shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European

Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.’

(12) Article 51 is replaced by the following:

‘Article 51

### **Penalties**

1. Without prejudice to paragraph 2, Member States shall provide for penalties applicable to infringements of the national provisions adopted in accordance with this Directive and shall take all the measures necessary to ensure that those penalties are enforced. The penalties provided for shall be effective, proportionate and dissuasive.’

2. In case of a breach of the national provisions transposing Articles 19a, 19d and 29a, Member States shall provide for at least the following administrative measures and sanctions:

(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.

3. Member States shall ensure that, when determining the type and level of penalties, administrative sanctions or measures referred to in paragraph 2, all relevant circumstances are taken into account, including:

(a) the gravity and the duration of the breach;

(b) the degree of responsibility of the natural person or legal entity responsible;

(c) the financial strength of the natural person or legal entity responsible;

(d) the importance of profits gained or losses avoided by the natural person or legal entity responsible, in so far as such profits or losses can be determined;

(e) the losses sustained by third parties as a result of the breach, in so far as those losses can be determined;

(f) the level of cooperation of the natural person or legal entity responsible with the competent authority;

(g) previous infringements by the natural person or legal entity responsible.’.

### *Article 2*

### ***Amendments to Directive 2004/109/EC***

Directive 2004/109/EC is amended as follows:

(1) in Article 2(1) the following point (r) is added:



‘(r) ‘sustainability reporting’ means sustainability reporting as defined in Article 2(18) of Directive 2013/34/EU of the European Parliament and of the Council\*<sup>18</sup>.’;

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\*<sup>18</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

(2) Article 4 is amended as follows:

(a) in paragraph 2, point (c) is replaced by the following:

‘(c) statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that, to the best of their knowledge, the financial statements prepared in accordance with the applicable set of accounting standards give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and the undertakings included in the consolidation taken as a whole and that the management report includes a fair review of the development and performance of the business and the position of the issuer and the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face and, where appropriate, that it is prepared in accordance with sustainability reporting standards referred to in Article 19b of Directive 2013/34/EU.’;

(b) paragraphs 4 and 5 are replaced by the following:

‘4. The financial statements shall be audited in accordance with Article 34 of Directive 2013/34/EU and Article 28 of Directive 2006/43/EC.

The audit report, signed by the person or persons responsible for carrying out the work set out in paragraphs 1 and 2 of Article 34 of Directive 2013/34/EU shall be disclosed in full to the public together with the annual financial report.

5. The management report shall be drawn up in accordance with Articles 19, 19a, 19d(1) and 20 of Directive 2013/34/EU, when drawn-up by undertakings referred to in those provisions.

Where the issuer is required to prepare consolidated accounts, the consolidated management report shall be drawn up in accordance with Article 19d(2), 29 and 29a of Directive 2013/34/EU, when drawn-up by undertakings referred to in those provisions.’;

(3) in Article 23(4), the third and fourth subparagraphs are replaced by the following:

‘The Commission shall, in accordance with the procedure referred to in Article 27(2), take the necessary decisions on the equivalence of accounting standards and on the equivalence of sustainability reporting standards as referred to in Article 19b of Directive 2013/34/EU which are used by third-country issuers under the conditions set out in Article 30(3). If the Commission decides that the accounting standards or the sustainability reporting standards of a third country are not equivalent, it may allow the issuers concerned to continue using such accounting standards during an appropriate transitional period.

In the context of the third subparagraph, the Commission shall also adopt, by means of delegated acts adopted in accordance with paragraphs 2a, 2b and 2c of Article 27, and subject to the conditions laid down in Articles 27a and 27b, measures aimed at establishing general equivalence criteria regarding accounting standards and sustainability reporting standards relevant to issuers of more than one country.’;

- (4) the following Article 28(d) is inserted:

‘Article 28d

#### **ESMA guidelines**

After consulting the European Environment Agency and the European Union Agency for Fundamental Rights, ESMA shall issue guidelines in accordance with Article 16 of Regulation 1095/2010 on the supervision of sustainability reporting by national competent authorities.

#### *Article 3*

#### **Amendments to Directive 2006/43/EC**

Directive 2006/43/EC is amended as follows:

- (1) Article 1 is replaced by the following:

*‘Article 1*

#### **Subject matter**

This Directive establishes rules concerning the statutory audit of annual and consolidated accounts and the assurance of annual and consolidated sustainability reporting, where this is performed by the statutory auditor or audit firm carrying out the statutory audit of financial statements.’;

- (2) Article 2 is amended as follows:

- (a) points 2 and 3 are replaced by the following:

‘2. ‘statutory auditor’ means a natural person who is approved in accordance with this Directive by the competent authorities of a Member State to carry out statutory audits and assurance engagements of sustainability reporting;

3. ‘audit firm’ means a legal person or any other entity, regardless of its legal form, that is approved in accordance with this Directive by the competent authorities of a Member State to carry out statutory audits and assurance engagements of sustainability reporting;’

- (b) the following points 21 and 22 are added:

‘21. ‘sustainability reporting’ means sustainability reporting as defined in Article 2, point (18), of Directive 2013/34/EU;

‘22. ‘assurance of sustainability reporting’ means the opinion expressed by the statutory auditor or audit firm in accordance with Article 34(1), second subparagraph, point (aa) and Article 34(2) of Directive 2013/34/EU.’;

- (3) Articles 6 and 7 are replaced by the following:

‘Article 6

#### **Educational qualifications**

Without prejudice to Article 11, a natural person may be approved to carry out a statutory audit and an assurance engagement of sustainability reporting only after having attained university entrance or equivalent level, then completed a course of theoretical instruction, undergone practical training and passed an examination of professional competence of university final or equivalent examination level, organised or recognised by the Member State concerned.

The competent authorities referred to in Article 32 shall cooperate with each other with a view to achieving a convergence of the requirements set out in this Article. When engaging in such cooperation, those competent authorities shall take into account developments in auditing and in the audit profession and, in particular, convergence that has already been achieved by the profession. They shall cooperate with the Committee of European Auditing Oversight Bodies (CEAOB) and the competent authorities referred to in Article 20 of Regulation (EU) No 537/2014 in so far as such convergence relates to the statutory audit and assurance of sustainability reporting of public-interest entities.

## Article 7

### Examination of professional competence

The examination of professional competence referred to in Article 6 shall guarantee the necessary level of theoretical knowledge of subjects relevant to statutory audit and assurance of sustainability reporting and the ability to apply such knowledge in practice. Part at least of that examination shall be written.’;

(4) Article 8(1) is amended as follows:

(a) the following point (bb) is inserted:

‘(bb) legal requirements and standards relating to the preparation of annual and consolidated sustainability reporting;’;

(b) the following point (cc) is inserted:

‘(cc) sustainability reporting standards;’;

(c) the following point (dd) is inserted:

‘(dd) sustainability analysis;’;

(d) the following point (ff) is inserted:

‘(ff) due diligence processes with regard to sustainability matters;’;

(e) the following point (ii) is inserted:

‘(ii) sustainability assurance standards as referred to in Article 26a;’;

(f) point (h) is replaced by the following:

‘(h) legal requirements and professional standards relating to statutory audit and assurance of sustainability reporting and statutory auditors;’;

(5) in Article 10, paragraph 1 is replaced by the following:

‘1. In order to ensure the ability to apply theoretical knowledge in practice, a test of which is included in the examination, a trainee shall complete a minimum of three years' practical training in, inter alia, the auditing of annual financial statements, consolidated financial statements or similar financial statements and the assurance of annual and consolidated sustainability reporting. At least two thirds of such practical

training shall be completed with a statutory auditor or an audit firm approved in any Member State.’;

- (6) in Article 11, point (a) is replaced by the following:

‘(a) that he or she has, for 15 years, engaged in professional activities which have enabled him or her to acquire sufficient experience in the fields of finance, law and accountancy, and sustainability reporting and has passed the examination of professional competence referred to in Article 7, or’;

- (7) in Article 14, paragraph 2, third subparagraph is replaced by the following:

‘The aptitude test shall be conducted in one of the languages permitted by the language rules applicable in the host Member State concerned. It shall cover only the statutory auditor’s adequate knowledge of the laws and regulations of that host Member State in so far as it is relevant to statutory audits and assurance engagements of sustainability reporting.’;

- (8) the following Article 14a is inserted:

*Article 14a*

**Statutory auditors approved or recognised before 1 January 2023**

Member States shall ensure that statutory auditors that are approved or recognised to carry out statutory audits before 1 January 2023 are not subject to the requirements of Articles 6, 7, 10, 11 and 14 of this Directive.

Member States shall ensure that statutory auditors approved before 1 January 2023 acquire the necessary knowledge in sustainability reporting and the assurance of sustainability reporting via the continuing education requirement of Article 13.’;

- (9) Article 24b is amended as follows:

- (a) paragraph 1 is replaced by the following:

‘1. Member States shall ensure that, when the statutory audit and the assurance of sustainability reporting is carried out by an audit firm, that audit firm designates at least one key audit partner. The audit firm shall provide the key audit partner(s) with sufficient resources and with personnel that have the necessary competence and capabilities to carry out his, her or its duties appropriately.

Securing audit quality, independence and competence shall be the main criteria when the audit firm selects the key audit partner(s) to be designated. The key audit partner(s) shall be actively involved in the carrying-out of the statutory audit and the assurance of sustainability reporting.’;

- (b) the following paragraph 2a is inserted:

‘2a. When carrying out the assurance of sustainability reporting, the statutory auditor shall devote sufficient time to the engagement and shall assign sufficient resources to enable him or her to carry out his or her duties appropriately.’;

- (c) in paragraph 4, point (c) is replaced by the following:

‘(c) the fees charged for the statutory audit, for the assurance of sustainability reporting and the fees charged for other services in any financial year.’;

- (d) paragraph 5 is replaced by the following:

‘5. A statutory auditor or an audit firm shall create an audit file for each statutory audit. The audit file shall also include information related to the assurance of sustainability reporting, where applicable.’;

(10) Article 25 is replaced by the following:

‘Article 25

**Audit fees**

Member States shall ensure that adequate rules are in place which provide that fees for statutory audits and the assurance of sustainability reporting:

(a) are not influenced or determined by the provision of additional services to the audited entity;

(b) cannot be based on any form of contingency.’;

(11) the following Article 25b is inserted:

‘Article 25b

**Professional Ethics, Independence, Objectivity, Confidentiality and Professional Secrecy as regards the assurance of sustainability reporting**

The requirements of Articles 21 to 24a as regards the statutory audit of financial statements shall apply to the assurance of sustainability reporting.’;

(12) the following Article 26a is inserted:

‘Article 26a

**Assurance standards for sustainability reporting**

1. Member States shall require statutory auditors and audit firms to carry out the assurance of sustainability reporting in compliance with assurance standards adopted by the Commission in accordance with paragraph 2.

Member States shall apply national assurance standards, procedures or requirements as long as the Commission has not adopted an assurance standard covering the same subject-matter.

Member States shall communicate the assurance procedures or requirements to the Commission at least three months before their entry into force.

2. The Commission shall be empowered to adopt, by means of delegated acts in accordance with Article 48a, the assurance standards referred to in paragraph 1 in order to set out the procedures that the auditor shall perform in order to draw its conclusions on the assurance of sustainability reporting, including engagement planning, risk consideration and response to risks and type of conclusions to be included in the audit report.

The Commission may adopt the assurance standards only where they:

(a) have been developed with proper due process, public oversight and transparency;

(b) contribute a high level of credibility and quality to the annual or consolidated sustainability reporting;

(c) are conducive to the Union public good.’



3. Where the Commission adopts standards for reasonable assurance, the opinion referred to in Article 34(1), second subparagraph, point (aa) of Directive 2013/34/EU shall be based on a reasonable assurance engagement.’;

(13) the following Article 27a is inserted:

‘Article 27a

**Assurance of consolidated sustainability reporting**

The requirements of Article 27 as regards the audit of consolidated financial statements shall apply *mutatis mutandis* to the assurance of consolidated sustainability reporting.’;

(14) Article 28 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The statutory auditor(s) or the audit firm(s) shall present the results of the statutory audit and, where applicable, of the assurance of sustainability reporting in an audit report. The report shall be prepared in accordance with the requirements of auditing standards adopted by the Union or Member State concerned, as referred to in Article 26 and with the requirements of assurance standards adopted by the Commission or Member State concerned, as referred to in Article 26a.’;

(b) paragraph 2 is amended as follows:

(i) the following point (aa) is inserted:

‘(aa) specify the annual or consolidated sustainability reporting and the date and period they cover; and identify the sustainability reporting framework that has been applied in their preparation;’;

(ii) the following point (bb) is inserted:

‘(bb) include a description of the scope of the assurance of sustainability reporting which shall, as a minimum, identify the assurance standards in accordance with which the assurance of sustainability reporting was conducted;’;

(c) in paragraph 2, point (e) is replaced by the following:

‘(e) include the opinions and statement, which shall be based on the work undertaken in the course of the audit, referred to in the second subparagraph of Article 34(1) of Directive 2013/34/EU, where applicable;’;

(d) in paragraph 3, the following subparagraph is added:

‘The requirements of the first subparagraph as regards the statutory audit shall apply to the assurance of sustainability reporting.’;

(e) in paragraph 4 the first subparagraph is replaced by the following:

‘The audit report shall be signed and dated by the statutory auditor. Where an audit firm carries out the statutory audit and, where applicable, the assurance of sustainability reporting, the audit report shall bear the signature of at least the statutory auditor(s) carrying out the statutory audit and the assurance of sustainability reporting on behalf of the audit firm. Where more than one statutory auditor or audit firm have been simultaneously engaged, the audit report shall be signed by all statutory auditors or at least by the statutory

auditors carrying out the statutory audit and the assurance of sustainability reporting on behalf of every audit firm. In exceptional circumstances Member States may provide that such signature(s) need not be disclosed to the public if such disclosure could lead to an imminent and significant threat to the personal security of any person.’;

(f) paragraph 5 is replaced by the following:

‘5. The report of the statutory auditor or the audit firm on the consolidated financial statements and, where applicable, on the consolidated sustainability reporting shall comply with the requirements set out in paragraphs 1 to 4. In reporting on the consistency of the management report and the financial statements as required by paragraph 2, point (e), the statutory auditor or the audit firm shall consider the consolidated financial statements and the consolidated management report. Where the annual financial statements of the parent undertaking are attached to the consolidated financial statements, the reports of the statutory auditors or the audit firms required by this Article may be combined.’

(15) Article 29 is amended as follows:

(a) in paragraph 1, point (d) is replaced by the following:

‘(d) the persons who carry out quality assurance reviews shall have appropriate professional education and relevant experience in statutory audit and financial reporting and in the assurance of sustainability reporting and sustainability reporting combined with specific training on quality assurance reviews;’;

(b) in paragraph 1, point (h) is replaced by the following:

‘(h) quality assurance reviews shall take place on the basis of an analysis of the risk and, in the case of statutory auditors and audit firms carrying out statutory audits as defined in Article 2, point (1)(a), and, where applicable, carrying out assurance engagements of sustainability reporting, at least every six years;’;

(c) in paragraph 2, point (a) is by the following:

‘(a) reviewers shall have appropriate professional education and relevant experience in statutory audit and financial reporting and in the assurance of sustainability reporting and sustainability reporting combined with specific training on quality assurance reviews;’;

(16) the following Article 30(g) is inserted:

‘Article 30g

#### **Investigations and Sanctions as regards the Assurance of Sustainability Reporting**

The requirements of Articles 30 to 30f as regards the statutory audit of financial statements shall apply to the assurance of sustainability reporting.’;

(17) the following Article 36(a) is inserted:

‘Article 36a

#### **Public Oversight and Regulatory Arrangements between Member States as regards the assurance of sustainability reporting**

The requirements of Articles 32, 33, 34 and 36 as regards the statutory audit of financial statements shall apply *mutatis mutandis* to the assurance of sustainability reporting.’;

- (18) the following Article 38a is inserted:

‘Article 38a

**Appointment and dismissal as regards the assurance of sustainability reporting**

The requirements of Articles 37 and 38 as regards the statutory audit of financial statements shall apply to the assurance of sustainability reporting.’;

- (19) in Article 39(6), points (a) to (e) are replaced by the following:

‘(a) inform the administrative or supervisory body of the audited entity of the outcome of the statutory audit and of the outcome of the assurance of sustainability reporting and explain how the statutory audit and the assurance of sustainability reporting contributed to the integrity of financial and sustainability reporting and what the role of the audit committee was in that process;

(b) monitor the financial and sustainability reporting process, including the digital reporting process referred to in Article 19d and the process carried out by the undertaking to identify the information reported according to the standards adopted pursuant to Article 19b of Directive 2013/34/EU, and submit recommendations or proposals to ensure its integrity;

(c) monitor the effectiveness of the undertaking's internal quality control and risk management systems and, where applicable, its internal audit, regarding the financial and sustainability reporting of the audited entity, including its digital reporting as referred to in Article 19d, without breaching its independence;’

(d) monitor the statutory audit of the annual and consolidated financial statements and the assurance of the annual and consolidated sustainability reporting, in particular, its performance, taking into account any findings and conclusions by the competent authority pursuant to Article 26(6) of Regulation (EU) No 537/2014;

(e) review and monitor the independence of the statutory auditors or the audit firms in accordance with Articles 22, 22a, 22b, 24a, 24b and 25b of this Directive and Article 6 of Regulation (EU) No 537/2014, and in particular the appropriateness of the provision of non-audit services to the audited entity in accordance with Article 5 of that Regulation;’;

- (20) Article 45 is amended as follows:

- (a) paragraph 1 is replaced by the following:

‘1. The competent authorities of a Member State shall, in accordance with Articles 15, 16 and 17, register every third-country auditor and audit entity, where that third-country auditor or audit entity provides an audit report concerning the annual or consolidated financial statements and, where applicable, concerning annual or consolidated sustainability reporting of an undertaking incorporated outside the Union whose transferable securities are admitted to trading on a regulated market of that Member State within the meaning of Article 4(1), point (14), of Directive 2004/39/EC, except where the undertaking in question exclusively issues outstanding debt securities for which one of the following applies:

(a) those securities have been admitted to trading on a regulated market in a Member State within the meaning of Article 2(1), point (c), of Directive 2004/109/EC of the European Parliament and of the Council\*<sup>19</sup> prior to 31 December 2010 and the denomination per unit of which is, at the date of issue, at least EUR 50 000 or, in the case of debt securities denominated in another currency, equivalent, at the date of issue, to at least EUR 50 000;

(b) those securities are admitted to trading on a regulated market in a Member State within the meaning of Article 2(1), point (c), of Directive 2004/109/EC from 31 December 2010 and the denomination per unit of which is, at the date of issue, at least EUR 100 000 or, in case of debt securities denominated in another currency, equivalent, at the date of issue, to at least EUR 100 000.’;

(b) in paragraph 5, the following point (dd) is inserted:

‘(dd) the assurance of the annual or consolidated sustainability reporting referred to in paragraph 1 are carried out in accordance with assurance standards as referred to in Article 26a, as well as the requirements laid down in Articles 22, 22b, 25 and 25b.’;

(c) paragraph 5a is replaced by the following:

‘5a. A Member State may register a third-country auditor only if he or she meets the requirements set out in paragraph 5, points (c), (d), (dd) and (e).

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\*<sup>19</sup> Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).’;

(21) Article 48a is amended as follows:

(a) in paragraph 2 the following subparagraph is added:

‘The power to adopt delegated acts referred to in Article 26a(2) shall be conferred on the Commission for an indeterminate period of time.’;

(b) paragraph 3 is replaced by the following:

‘3. The delegation of power referred to in Articles 26(3), 26a(2), 45(6), 46(2) and 47(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.’;

(c) paragraph 5 is replaced by the following:

‘5. A delegated act adopted pursuant to Articles 26(3), 26a(2), 45(6), 46(2) and 47(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of four months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be

extended by two months at the initiative of the European Parliament or of the Council.’

*Article 4*  
***Amendments to Regulation (EU) No 537/2014***

Regulation (EU) No 537/2014 is amended as follows:

(22) Article 5 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the first subparagraph is replaced by the following:

‘1. A statutory auditor or an audit firm carrying out the statutory audit and, where applicable, the assurance of sustainability reporting of a public-interest entity, or any member of the network to which the statutory auditor or the audit firm belongs, shall not directly or indirectly provide to the audited entity, to its parent undertaking or to its controlled undertakings within the Union any prohibited non-audit services in:

(a) the period between the beginning of the period audited and the issuing of the audit report; and

(b) the financial year immediately preceding the period referred to in point (a) in relation to the services listed in point (e) of the second subparagraph.’;

(ii) in the second subparagraph, the following point (l) is added:

‘(l) consulting services for the preparation of sustainability reporting, where the statutory auditor or audit firm carries out the assurance of sustainability reporting.’;

(b) the following paragraph 6 is added:

‘6. Paragraphs 4 and 5 referring to the statutory audit of financial statements shall apply to the assurance of sustainability reporting, where applicable.’

(23) in Article 14, point (b) is replaced by the following:

‘(b) revenues from non-audit services other than those referred to in Article 5(1) which are required by Union or national legislation, specifying the revenues from the assurance of sustainability reporting; and.’.

*Article 5*  
**Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 3 of this Directive by 1 December 2022. They shall immediately inform the Commission thereof.

Member States shall provide that the provisions referred to in the first subparagraph shall apply for financial years starting on or after 1 January 2023

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.



2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 6*

**Date of application of Article 4**

Article 4 of this Directive shall apply to financial years starting on or after 1 January 2023.

*Article 7*

**Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

*Article 8*

**Addressees**

This Directive is addressed to the Member States. Article 4 shall, however, be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*