



Council of the
European Union

Brussels, 12 November 2021
(OR. en)

13840/21

Interinstitutional File:
2021/0104(COD)

DRS 54
EF 343
ECOFIN 1083
SUSTDEV 149
CODEC 1462
IA 174
COMPET 807

NOTE

From: Presidency

To: Council

No. Cion doc.: 8132/21

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
AOB : Progress report

Delegations will find attached the progress report on the Proposal for a Directive as regards corporate sustainability reporting, with a view to the AOB items at the meeting of the Competitiveness Council on 25 November 2021.

I. INTRODUCTION

The 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 was adopted by the European Commission on 21 April 2021.

Set against the historic backdrop of the European Green Deal and in line with the Commission's Sustainable Finance Action Plan, the proposal aims to address shortcomings of existing rules on non-financial reporting, which have proven insufficient to facilitate the transition to a sustainable economy.

The growing awareness of investors regarding the importance of sustainability matters for company performance needs to be met with access to understandable, relevant, verifiable and comparable information on sustainability-related aspects of company operations, represented in a faithful manner. Such information will allow investors to channel resources towards undertakings that address sustainability-related challenges most effectively and will allow stakeholders to hold companies accountable for their impacts.

To achieve this objective, the proposal introduces important updates to sustainability reporting, including:

- A significant widening of the scope of subject undertakings, to include all large undertakings and all undertakings listed on EU regulated markets (including listed SMEs, with the exception of listed micro-enterprises);
- A clarification and broadening of the reporting requirements;
- A standardization of reporting in accordance with mandatory EU-wide standards, including proportionate standards for listed SMEs;

- Digitalization of reporting, ensuring the machine-readability of reported information; and
- The assurance of reported information.

The proposal amends four existing pieces of legislation, namely the Accounting Directive, the Transparency Directive, the Audit Directive and the Audit Regulation.

II. WORK CONDUCTED IN THE COUNCIL PREPARATORY BODIES

The Working Party on Company Law (G.04) began work on the proposal on 7 May 2021 under the Portuguese Presidency, when it examined the impact assessment, concluding that the latter had no major omissions or factual mistakes, and that the examination of the proposal could proceed accordingly.

The work of the Working Party in relation to the proposal continued apace under the Slovenian Presidency, with nine meetings dedicated to its examination so far. During its meeting on 24 September 2021, the Working Party completed its first full reading of the proposal and decided on the future orientation of work by highlighting aspects of the proposal that required additional attention in the opinion of Member States.

The exchange of views subsequently focused on these aspects of the proposal, with the start of drafting Presidency suggestions following the reception of comments made by Member States.

Striving to maintain a smooth and inclusive course of the legislative procedure in the Council, the Presidency maintained dialogue with delegations and presented compromise proposals on aspects drawing most numerous comments at the meeting of the Working Party on 8 November 2021.

The Presidency has since prepared a compromise text proposal covering most aspects of the proposal, which will be discussed at the meeting of the Working Party on 8 December 2021. This approach will ensure the continuity of work in the Council Working Party and pave the way for the adoption of the proposal in 2022.

III. MAIN POLITICAL ISSUES

The deliberations carried out in the Working Party point to a broad consensus among Member States that the Non-Financial Reporting Directive adopted in 2014, while innovative at the time, no longer represents an adequate response to new sustainability-related challenges.

During examination and exchange of views, Member States provided many comments, both by means of interventions at Working Party meetings and in written format. These included general support for the proposal, concerns regarding certain aspects of the proposal and some suggestions aimed at improving the text.

By using discussion notes and questions to steer the discussion, the Presidency attempted to get an initial understanding of the views of delegations regarding particular aspects of the proposal. Once key issues for discussion were identified, they were placed on the agenda for an in-depth discussion in the Working Party. The main political issues of the proposal include:

- The scope

Given the extension of the scope referred to above, delegations expressed concerns regarding the criteria for inclusion, particularly as it relates to financial undertakings. Other suggestions included extending the scope to non-EU companies operating in the EU, as well as calls for more clarity in the text regarding the application of the rules to credit institutions and insurance companies.

- The definition of intangibles

Many delegations have called for further clarity with regard to the definition of intangibles and the corresponding reporting obligation. While some called for further specification of the definition, others proposed to remove the reporting requirement on intangibles from the proposal altogether.

- The balance and interaction between the legislative text and the future standards

In order to provide the necessary comparability of reported information, a core element of the proposal concerns the introduction of mandatory EU-wide reporting standards. In this regard, delegations expressed concerns about legal certainty in relation to the exact content of the reporting obligation, while others commented on the modalities of the empowerment to the Commission.

- Deadline for transposition and start of application

The deadline for transposition was deemed overly ambitious and unrealistic by many delegations. Some have called for the deadline to be set relative to the entry into force of the directive, while other urged for sufficient time to be provided to undertakings to adapt their internal processes and obtain the required competencies, and for Member States to transpose the provisions into national law.

- The assurance of sustainability reporting

Regarding this aspect, some delegations pointed to the need to provide the choice to auditors as to whether or not to provide sustainability reporting assurance services, while others asked for more clarity regarding requirements for independent assurance services providers. Delegations also requested additional clarity regarding assurance standards.

Other issues, identified by delegations as aspects requiring further discussion included:

- The enforcement regime and sanctions:

Delegations expressed concerns regarding the compatibility of proposed rules with national sanction systems in the field of corporate reporting.

- The location of sustainability reporting

The proposal removes the option for Member States to allow undertakings to report sustainability information elsewhere than in the management report. Delegations pointed the importance of presenting the sustainability information separately, citing the concerns regarding the attribution of responsibility in the context of assurance.

- The single electronic reporting format

Delegations voiced concerns about the compatibility of the proposed rules with national requirements on the format of reporting.

While the above list of aspects in no way claims to provide a comprehensive overview of exchanges of views in the Working Party, it nevertheless highlights aspects that have drawn most numerous comments by delegations. Based on discussions in the Working Party, as well as written contributions by Member States, the Presidency has been drafting a compromise text proposal.

At the Working Party meeting on 8 November 2021, the Presidency proposed partial compromise texts on the definition of and reporting requirement on intangibles, the deadline for transposition and start of application, and on the exemptions for subsidiary undertakings. These compromise proposals received constructive comments by delegations, allowing the Presidency to fine-tune the compromise text further in this context.

Following this exchange of views, the Presidency has prepared a compromise text proposal covering the majority of the provisions contained in the proposal. The Presidency compromise text will be presented and subject to an initial exchange of views at the meeting of the Working Party in December, paving the way for the adoption of the proposal in 2022.

IV. CONCLUSIONS

The Council is invited to take note of the progress achieved during the Slovenian Presidency in relation to this proposal.