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**WK 13098/2021 INIT**

**LIMITE**

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**MEETING DOCUMENT**

From:	Presidency
To:	Working Party on Company Law (Sustainability information)
N° Cion doc.:	ST 8132/21
Subject:	Working Party Company Law ( Sustainability Information) Meeting of 8 November 2021 - Presidency Note

Delegations will find attached a Presidency Note on CSRD for the WP meeting on 08/11/2021

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WK 13098/2021 INIT

**LIMITE**

**EN**



Working Party on Company Law (G.4)

Corporate Sustainability Reporting Directive proposal (CSRD)

Meeting on the 8<sup>th</sup> of November 2021

## **PRESIDENCY NOTE**

### **1. Introduction**

This note aims to frame the discussion on the selected topics of the CSRD proposal for the ninth meeting of our Working Party dedicated to this file.

Following the first reading of the text, which we completed in September 2021, we have received many comments and drafting suggestions for the compromise text, which we found very insightful. We wish to thank the delegations for their active cooperation in the negotiation process and their contributions, which aim to improve the current proposal in a significant way.

### **2. Drafting proposals on three topics**

Member States provided many comments during the Working Party meetings and in writing. They included both support for the proposal, concerns regarding some specific provisions and some suggestions for improving the text. The Presidency carefully examined all of the comments received.

We believe it is appropriate to start discussing concrete drafting proposals, and we wish to start with three topics that have attracted a significant amount of comments by Member States.

We wish to invite delegations to participate in the discussion on the topics presented below during the meeting on the 8<sup>th</sup> of November 2021.



## **A. Intangibles**

A number of delegations have expressed reservations about the inclusion of a disclosure requirement on intangibles under the CSRD proposal and/or have called for more precision in the text about exactly what information companies would have to disclose regarding intangibles. In this context, some delegations have raised questions about the definition of intangibles.

To answer Member States' questions and to get more clarity regarding this definition, the Commission kindly prepared a non-paper on intangibles, which we want to put forward for a discussion during our meeting.

After carefully examining the non-paper and taking into account Member States' comments, the Presidency prepared a drafting proposal of Article 1, paragraph 2 (Article 2, point 19 of Accounting Directive) and corresponding Article 1, paragraph 3 (Article 19a, paragraph 2, subparagraph 2 of Accounting Directive), which are presented in Annex 1 of this Presidency note.

## **B. Timeline**

Many comments by Member States were made in relation to the proposed timeline, which they consider too ambitious. We understand the pressing need for the revision of Non-Financial Reporting Directive and at the same time believe the quality of the legislation is of utmost importance.

Member States need sufficient time for the transposition of the directive into national legal orders, undertakings require time for adjustments of their governance and a certain period is needed for the accommodation of practical and theoretical training regarding the assurance of sustainability reporting as well.

We believe that, by reaching an agreement on the timeline, we will resolve some of the above concerns, therefore it is appropriate to address this topic with a concrete drafting proposal of Article 5 of CSRD in Annex 2 regarding:

- the proposed timeline for the transposition,
- the proposed timeline for the start of application.

## **C. Exemptions for subsidiary undertakings and parent undertakings**

A number of delegations have expressed reservations about certain aspects of the obligations imposed on subsidiary undertakings exempted from the reporting obligations of Articles 19a and 29a.



Users of information need to easily know where to find the sustainability information reported and be able to access it. At the same time, the obligations imposed on the exempted subsidiary undertakings should be reduced to what is strictly necessary.

Taking into account Member States' comments, the Presidency prepared a drafting proposal of Article 1, paragraph 3 (Article 19a(7) of the Accounting Directive) and Article 1, paragraph 7 (Article 19a(7) of the Accounting Directive), which delegations are invited to examine in [Annex 3](#).

### **3. Progress report regarding the CSRD Proposal**

The discussion of the CSRD proposal began during the Portuguese Presidency and has continued during the Slovenian Presidency in a smooth and inclusive manner. The Working Party on Company Law has dedicated eight meetings so far to the examination of this proposal. We believe a lot of work has been done to pave the way for reaching an agreement on this important file in 2022, hopefully already under the upcoming French Presidency.

Intense drafting efforts on a Presidency compromise text are underway, with certain aspects presented during today's meeting. We expect to be in a position to present the outcome of this work during a meeting of our Working Party in December.

In order to report on progress achieved, the Presidency intends to place a Progress Report regarding the CSRD proposal on the agenda of the meeting of the Competitiveness Council on the 25<sup>th</sup> of November 2021 under AOB item.

## PRESIDENCY COMPROMISE PROPOSAL

### INTANGIBLES:

- Article 1, paragraph 2 (Article 2, point 19 of Accounting Directive)

*(19) 'key intangible resources' means resources without physical substance on which the business model of the undertaking fundamentally depends and that are a source of creation, preservation or erosion of the value of the undertaking';*

- Article 1, paragraph 3 (Article 19a, paragraph 2, subparagraph 2 of Accounting Directive)

*Undertakings shall also report information on the key intangible resources on which the business model of the undertaking fundamentally depends, and explain this dependency and how they are a source of value creation, preservation or erosion for the undertaking.*

*This information shall include, as appropriate:*

- a) information about employees' skills, competencies, experience, loyalty to the undertaking and motivation for improving processes, goods and services;*
  - b) information about intellectual property, including patents, copyrights, software and licences, and information about other organisational resources, including tacit knowledge, systems, procedures and protocols;*
  - c) information about the quality of the relationships between the undertaking and its stakeholders, including customers, suppliers and communities affected by the activities of the undertaking;*
  - d) information about the brand value and reputation of the undertaking.*
- Article 1, paragraph 7 (Article 29a, paragraph 2, subparagraph 2 of Accounting Directive)

*Parent undertakings shall also report information on the key intangible resources on which the business model of the group fundamentally depends, and explain this dependency and how*



*they are a source of value creation, preservation or erosion for the group.*

*This information shall include, as appropriate:*

- a) information about employees' skills, competencies, experience, loyalty to the undertaking and motivation for improving processes, goods and services;*
- b) information about intellectual property, including patents, copyrights, software and licences and information about other organisational resources, including tacit knowledge, systems, procedures and protocols;*
- c) information about the quality of the relationships between the group and its stakeholders, including customers, suppliers and communities affected by the activities of the group;*
- d) information about the brand value and reputation of the group.*



## PRESIDENCY COMPROMISE PROPOSAL

### TRANSPOSITION:

– Article 5

*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 [Publications Office - set the date = eighteen months after entry into force]. 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:*

- a) 1 January 2024 for sustainability reporting of large undertakings referred to in Article 2, point (1), point (a) of Directive 2013/34/EU,*
- b) 1 January 2025 for sustainability reporting of large undertakings other than those referred to in point (a) and*
- c) 1 January 2026 for sustainability reporting of small and medium-sized undertakings referred to in Article 2, point (1), point (a) of Directive 2013/34/EU.*

## PRESIDENCY COMPROMISE PROPOSAL

**EXEMPTIONS FOR SUBSIDIARY UNDERTAKINGS AND PARENT UNDERTAKINGS:**

- Article 1, paragraph 3 (Article 19a, paragraph 7 of Accounting Directive)

*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\*6, to the manner required by the sustainability reporting standards referred to in Article 19b of this Directive.*

*The management report of an undertaking that is exempted from the obligations set out in paragraphs 1 to 4 pursuant to subparagraph 1 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 web link to the consolidated management report of the parent undertaking and to the opinion referred to in Article 34(1)(aa) of this Directive;*
- c) the fact that the undertaking is exempted from the obligations set out in paragraphs 1 to 4 of this Article.*

*When the parent undertaking referred to in subparagraph 1 is established in a third country, its consolidated management*



*report shall be published in accordance with Article 30, in the manner prescribed by the law of the Member State by which the subsidiary 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 third 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.*

*Undertakings which are exempted from preparing a management report according to Article 37 of this Directive, shall:*

- a) publish a management report limited to the information of points a, b and c of subparagraph 4; or*
- b) publish the consolidated management report referred to in the first subparagraph of this paragraph in accordance with subparagraphs 3 and 4.*

*For the purposes of the first subparagraph, credit institutions referred to in Article 1, point (3), point (b) that are permanently affiliated to a central body which supervises them under the conditions laid down in Article 10 of Regulation (EU) No 575/2013 of the European Parliament and of the Council shall be treated as subsidiaries of the central body.*

- Article 1, paragraph 3 (Article 19a, new paragraph 8 of Accounting Directive)

*8. The exemption of paragraph 7 shall also apply to public interest entities subject to the requirements of this Article.;*

- Article 1, paragraph 7 (Article 29a, paragraph 7 of Accounting Directive)

*7. A parent undertaking which is also a subsidiary undertaking shall be exempted from the obligations 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 a parent undertaking that is exempted from the obligations set out in paragraphs 1 to 4 pursuant to subparagraph 1 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 web link to the consolidated management report of the parent undertaking and to the opinion referred to in Article 34(1)(aa) of this Directive;*
- c) the fact that the undertaking is exempted from the obligations set out in paragraphs 1 to 4 of this Article.*

*When the parent undertaking referred to in subparagraph 1 is established in a third country, its consolidated management report shall be published in accordance with Article 30, in the manner prescribed by the law of the Member State by which the subsidiary 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 third 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.*



*Parent undertakings which are exempted from preparing a consolidated management report according to Article 23 of this Directive, shall:*

- a) publish a consolidated management report limited to the information of points a, b and c of subparagraph 4; or*
- b) publish the consolidated management report referred to in the first subparagraph of this paragraph in accordance with subparagraphs 3 and 4.*

*For the purposes of the first subparagraph, credit institutions referred to in Article 1, point (3), point (b) that are permanently affiliated to a central body which supervises them under the conditions laid down in Article 10 of Regulation (EU) No 575/2013 of the European Parliament and of the Council shall be treated as subsidiaries of the central body.*

- Article 1, paragraph 7 (Article 29a, new paragraph 8 of Accounting Directive)

*8. The exemption of paragraph 7 shall also apply to public interest entities subject to the requirements of this Article.’;*



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