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Appendix 1 to Issues Paper 04-01

CSRD Legal Provisions as basis for an approach to develop listed SMEs ESRS

Objective

This appendix summarises the Corporate Sustainability Reporting Directive (CSRD)¹ provisions related to SMEs whose securities are listed in regulated markets (listed SMEs). The objective is to inform SR TEG about those provisions that determine the perimeter of the legal mandate on which basis EFRAG will develop its technical advice for the simplified reporting standards for listed SMEs (listed SMEs ESRS).

Inventory of CSRD provisions related to listed SMEs ESRS

1 Article 19a (par. 1,6 and 7)

Sustainability reporting

Par 1. Large undertakings, and **small and medium-sized undertakings**, except micro undertakings, which are public-interest entities as defined in point (a) of point (1) of Article 2 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. The information referred to in the first subparagraph shall be clearly identifiable within the management report, through a **dedicated section of the management report**.

Par. 6. By way of derogation from paragraphs 2 to 4 of this Article, and without prejudice to paragraphs 9 and 10 of this Article, **small and medium-sized undertakings** referred to in paragraph 1 of this Article, **small and non-complex institutions** defined in point (145) of Article 4(1) of Regulation (EU) No 575/2013, **captive insurance** undertakings defined in point (2) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council*** and **captive reinsurance** undertakings defined in point (5) of Article 13 of that Directive **may limit their sustainability reporting to the following information:**

- (a) a brief description of the undertaking's business model and strategy;
- (b) a description of the undertaking's policies in relation to sustainability matters;
- (c) the principal actual or potential adverse impacts of the undertaking on sustainability matters, and any actions taken to identify, monitor, prevent, mitigate or remediate such actual or potential adverse impacts;

¹ Adopted Text, P9_TA(2022)0380, Corporate Sustainability Reporting Directive- European Parliament legislative resolution of 10 November 2022 on 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 (COM(2021)0189 – C9-0147/2021 – 2021/0104(COD))

(d) the principal risks to the undertaking related to sustainability matters and how the undertaking manages those risks;

(e) key indicators necessary for the disclosures referred to in points (a) to (d).

Small and medium-sized undertakings, small and non-complex institutions and captive insurance and reinsurance undertakings that rely on the derogation referred to in the first subparagraph **shall report in accordance with the sustainability reporting standards for small and medium-sized undertakings referred to in Article 29c.**

Par. 7. For **financial years starting before 1 January 2028**, by way of derogation from paragraph 1 of this Article, **small and medium-sized undertakings** which are public-interest entities as defined in point (a) of point (1) of Article 2 **may decide not to include in their management report the information referred to in paragraph 1 of this Article.** In such cases, the undertaking shall, nevertheless, briefly state in its management report why the sustainability reporting was not provided.

2 Article 29b par. 4

Sustainability reporting standards (cap value chain)

Sustainability reporting standards shall take account of the difficulties that undertakings may encounter in gathering information from actors throughout their value chain, especially from those which are not subject to the sustainability reporting requirements laid down in Article 19a or 29a and from suppliers in emerging markets and economies. Sustainability reporting standards shall specify disclosures on value chains that are proportionate and relevant to the capacities and the characteristics of undertakings in value chains, and to the scale and complexity of their activities, especially those of undertakings that are not subject to the sustainability reporting requirements in Article 19a or 29a. **Sustainability reporting standards shall not specify disclosures that would require undertakings to obtain information from small and medium-sized undertakings in their value chain that exceeds the information to be disclosed pursuant to the sustainability reporting standards for small and medium-sized undertakings referred to in Article 29c.**

This **new article 29b par. 4**, introduces a **new concept to limit the effect of trickle down**: the need for ESRS standards to not specify disclosures that would require undertakings to obtain information from SMEs in their value chain that exceeds the information to be disclosed according to the ESRS for listed SMEs.

EFRAG SR TEG and EFRAG SRB discussed (8 July 2022 and 3-5 October 2022) how to approach the amendments to the ESRS in Set 1 to reflect this new concept and information principle. They considered that to properly implement this new concept a detailed assessment of all the DRs in ESRS is needed, including how they will be treated in the standard for listed SMEs.

The listed SMEs ESRS is developed as part of Set 2. Hence it will be finalised after the completion of Set 1. For this reasons SR TEG and SR Board Members recommended to develop an **amendment to Set 1 stemming from the listed SMEs ESRS as part of Set 2** (to be delivered by EFRAG to the EC in draft in November 2023).

This is an important element to be considered by SR TEG when advising on the approach to the listed SMEs ESRS. The content of the latter will impact the content of the ESRS for large undertakings of Set 1 that will have to be amended accordingly. This will set the limits of the value chain triggered by listed SMEs ESRS.

To note as well that in ESRS 1 an application provision was introduced to ensure that the text of ESRS in Set 1 is aligned with the intent of the legislator, when introducing the cap in the value chain, at cross-cutting level so it would be applicable to all ESRS.

3 Article 29b par. 5

Sustainability reporting standards (international initiatives and EU laws)

When adopting delegated acts pursuant to paragraph 1, the Commission shall, to the greatest extent possible, take account of:

- (a) the work of global standard-setting initiatives for sustainability reporting, and existing standards and frameworks for natural capital accounting and for greenhouse gas accounting, responsible business conduct, corporate social responsibility, and sustainable development;
- (b) the information that financial market participants need in order 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, indicators and methodologies set out in the delegated acts adopted pursuant to Regulation (EU) 2020/852, including the technical screening criteria established pursuant to Article 10(3), Article 11(3), Article 12(2), Article 13(2), Article 14(2) and Article 15(2) of that Regulation and the reporting requirements set out in the delegated act adopted pursuant to Article 8 of that Regulation;
- (d) the disclosure requirements applicable to benchmark 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*, (EU) 2020/1817** and (EU) 2020/1818***;
- (e) the disclosures specified in the implementing acts adopted pursuant to Article 434a of Regulation (EU) No 575/2013;
- (f) Commission Recommendation 2013/179/EU****;
- (g) Directive 2003/87/EC of the European Parliament and of the Council*****;
- (h) Regulation (EU) 2021/1119;
- (i) Regulation (EC) No 1221/2009 of the European Parliament and of the Council*****;
- (j) Directive (EU) 2019/1937 of the European Parliament and of the Council*****.

4 Article 29c (par. 1, 2 and 3)

Sustainability reporting standards for small and medium-sized undertakings

Par. 1. The Commission shall, **by 30 June 2024, adopt delegated acts** in accordance with Article 49 supplementing this Directive to provide **for sustainability reporting standards proportionate** and relevant to the capacities and the characteristics **of small and medium-sized undertakings** and to the scale and complexity of their activities. Those sustainability reporting standards shall specify for the small and medium-sized undertakings referred to in point (1)(a) of Article 2 the information that is to be reported in accordance **with Article 19a(6)**.

The reporting requirements laid down in the delegated acts referred to in the first subparagraph shall not enter into force earlier than four months after their adoption by the Commission.

Par. 2. Sustainability reporting standards for **small and medium-sized undertakings shall take into account the criteria set out in Article 29b (2) to (5)**. They shall also, to the extent possible, **specify the structure to be used to present that information**.

Par. 3. The Commission shall, at least every three years after their date of application, review the delegated acts adopted pursuant to this Article, taking into consideration the technical advice of the EFRAG and, where necessary, it shall amend such delegated acts to take into account relevant developments, including developments with regard to international standards

- 5 **Recital (17)** introduces the concept of SFRD and art. 8 Taxonomy Regulation in ESRs for listed SMEs

(17) 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 sustainability information. **It is therefore appropriate to require all large undertakings and all undertakings, except micro undertakings, whose securities are admitted to trading on a regulated market in the Union to report sustainability information**. The provisions of this amending Directive amending Articles 19a and 29a of Directive 2013/34/EU explicitly set out the scope of the reporting requirements with reference to Articles 2 and 3 of Directive 2013/34/EU. Therefore, they do not simplify or modify another requirement and the restriction of exemptions for public-interest entities provided for in Article 40 of Directive 2013/34/EU does not apply. In particular, public-interest entities should not be treated as large undertakings for the purposes of the application of the sustainability reporting requirements. Accordingly, small and medium-sized undertakings whose securities are admitted to trading on **a regulated market in the Union that are public-interest entities should be allowed to report in accordance with the sustainability reporting standards for small and medium-sized undertakings**. In addition, all undertakings that are parent undertakings of large groups should prepare sustainability reporting at group level. Moreover, since Article 8 of Regulation (EU) 2020/852 refers to Article 19a and Article 29a of Directive 2013/34/EU, **the undertakings added to the scope of the sustainability reporting requirements will also have to comply with Article 8 of Regulation (EU) 2020/852**.

- 6 **Recital (21)** Considering the growing relevance of sustainability-related risks and taking into account **that small and medium-sized undertakings whose securities are admitted to trading on a regulated market** in the Union comprise a significant proportion of all undertakings whose securities are admitted to trading on a regulated market in the Union, in order to **ensure investor protection**, it is appropriate to require that also small and medium-sized undertakings, except micro undertakings, whose securities are admitted to trading on a regulated market in the Union disclose information **on sustainability matters**. The introduction of such a requirement will help to ensure **that financial market participants** can include smaller undertakings whose securities are admitted to trading on a regulated market in the Union 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 undertakings whose securities are admitted to trading on a regulated market in the Union to financial capital, and avoid discrimination against such undertakings on the part of financial market participants. The introduction of the **requirement for small and medium-sized undertakings, except micro undertakings, whose securities are admitted to trading on a regulated**

market in the Union **to disclose information on sustainability matters 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**. Small and medium-sized undertakings whose securities are admitted to trading on a regulated market in the Union should be given the possibility of reporting in accordance with standards that **are proportionate to their capacities and resources, and relevant to the scale and complexity of their activities**. Small and medium-sized undertakings whose securities are not admitted to trading on a regulated market in the Union should also have the possibility of choosing to use such proportionate standards on a voluntary basis. The sustainability reporting standards for small and medium-sized undertakings will constitute a reference for undertakings that are within the scope of the requirements introduced by this amending Directive regarding the level of sustainability information that they could reasonably request from small and medium-sized undertakings that are suppliers or clients in the value chains of such undertakings. Small and medium-sized undertakings whose securities are admitted to trading on a regulated market in the Union should, in addition, be given sufficient time to prepare for the application of the provisions requiring sustainability reporting, due to their smaller size and more limited resources, and taking account of the difficult economic circumstances created by the COVID-19 pandemic. Therefore, the provisions on corporate sustainability reporting as regards small and medium-sized undertakings, except micro undertakings, whose securities are admitted to trading on a regulated market in the Union should apply for financial years starting on or after 1 January 2026. Following that date, for a transitional period of two years, small and medium-sized undertakings whose securities are admitted to trading on a regulated market in the Union should have the possibility of opting-out from the sustainability reporting requirements laid down in this amending Directive, provided they briefly state in their management report why the sustainability information has not been provided.

- 7 **Recital 53** has introduced a new concept and information principles to be followed (in bold in the paragraph below):

(53) "*Standards shall specify disclosures on value chains that are **proportionate and relevant to the scale and complexity of the activities, and the capacities and characteristics of undertakings in value chains**, especially those of undertakings that are not subject to the sustainability reporting obligations pursuant to this Directive. **Standards shall not specify disclosures that would require undertakings to obtain information from small and medium-sized undertakings in their value chain that exceeds the information to be disclosed according to the sustainability reporting standards for small and medium-sized undertakings**. This provision is without prejudice to any EU requirements on undertakings to conduct a due diligence process*".

Comparison of reporting areas to be covered in ESRS for listed SMEs versus ESRS

- 8 Based on the inventory of the CSRD legal provisions reported in par. 1 to 12, the secretariat has performed a comparison to determine the difference between ESRS for listed SMEs and ESRS for large undertakings for what concerns the reporting areas.
- 9 The table below provides an overview of correspondences and differences of reporting areas between ESRS for listed SMEs and ESRS for large undertakings. Correspondences are highlighted in bold.

Appendix 2 CSRD provisions for Development of European Sustainability Reporting Standards for Listed SMEs

Reporting areas in listed SMEs ESRS [art 19a (6)]	Reporting areas in ESRS [art 19a (2)]
<p>(a) a brief description of the undertaking's business model and strategy;</p>	<p>(a) a brief description of the undertaking's business model and strategy, including:</p> <ul style="list-style-type: none"> i. the resilience of the undertaking's business model and strategy in relation to risks related to sustainability matters; ii. the opportunities for the undertaking related to sustainability matters; iii. the plans of the undertaking, including implementing actions and related financial and investment plans, 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 under the United Nations Framework Convention on Climate Change adopted on 12 December 2015 (the 'Paris Agreement') and the objective of achieving climate neutrality by 2050 as established in Regulation (EU) 2021/1119 of the European Parliament and of the Council*, and, where relevant, the exposure of the undertaking to coal-, oil- and gas-related activities; 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;
<p>(b) description of the undertaking's policies in relation to sustainability matters;</p>	<p>(d) a description of the undertaking's policies in relation to sustainability matters;</p>
<p>(c) the principal actual or potential adverse impacts of the undertaking on sustainability matters, and any actions taken to identify, monitor, prevent, mitigate or remediate such actual or potential adverse impacts;</p>	<p>(f) a description of:</p> <ul style="list-style-type: none"> (ii) the principal actual or potential adverse impacts connected with the undertaking's own operations and with its value chain, including its products and services, its business relationships and its supply chain, actions taken to identify and monitor those impacts, and other adverse impacts which the undertaking is required to identify pursuant to other Union requirements on undertakings to conduct a due diligence process; (iii) any actions taken by the undertaking to prevent, mitigate, remediate or bring an end to

Appendix 2 CSRD provisions for Development of European Sustainability Reporting Standards for Listed SMEs

	actual or potential adverse impacts, and the result of such actions
(d) the principal risks to the undertaking related to sustainability matters and how the undertaking manages those risks;	(g) a description of the principal risks to the undertaking related to sustainability matters, including a description of the undertaking's principal dependencies on those matters, and how the undertaking manages those risks;
(e) key indicators necessary for the disclosures referred to in points (a) to (d).	(h) indicators relevant to the disclosures referred to in points (a) to (g).
	(b) a description of the time-bound targets related to sustainability matters set by the undertaking, including, where appropriate, absolute greenhouse gas emission reduction targets at least for 2030 and 2050, a description of the progress the undertaking has made towards achieving those targets, and a statement of whether the undertaking's targets related to environmental factors are based on conclusive scientific evidence;
	(c) a description of the role of the administrative, management and supervisory bodies with regard to sustainability matters, and of their expertise and skills in relation to fulfilling that role or the access such bodies have to such expertise and skills
	(e) information about the existence of incentive schemes linked to sustainability matters which are offered to members of the administrative, management and supervisory bodies;
	(f) a description of: (i) the due diligence process implemented by the undertaking with regard to sustainability matters, and, where applicable, in line with Union requirements on undertakings to conduct a due diligence process;

- 10 The table above shows that the overall reporting areas are the same, but many of the detailed reporting contents applicable to the large entities within those reporting areas are not explicitly required for listed SMEs. Also, for indicators, ESRS for listed SMEs should focus on key indicators.
- 11 In particular, for the following detailed reporting contents that are not explicitly mentioned in the list of disclosures to be covered in listed SMEs ESRS, the technical question is to what extent they should or can still be included in the listed SME standard, as they refer to content areas that should nevertheless be covered.: i) opportunities, ii) targets and progresses, iii) financial plans and resources, iv) implementation of the strategy, v) due diligence, vi) value chain, vii) transition plans in line with Paris agreement , climate law and exposure to coal and mining, viii) dependencies, ix) role of administrative, management and supervisory bodies in

sustainability matters and their expertise and skills ; ix) incentive schemes linked to sustainability matters.

Sustainability matters to be covered in ESRS and ESRS for listed SMEs

- 12 According to art. 29c of CSRD, listed SMEs ESRS *shall consider* the criteria set in **art 29b (2)**. This article defines the list of sustainability matters to be covered by ESRS for large undertakings, as follows:
- (a) specify the information that undertakings are to disclose about the following **environmental factors**:
- (i) climate change mitigation, including as regards scope 1, scope 2 and, where relevant, scope 3 greenhouse gas emissions;
 - (ii) climate change adaptation;
 - (iii) water and marine resources;
 - (iv) resource use and the circular economy;
 - (v) pollution;
 - (vi) biodiversity and ecosystems;
- (b) specify the information that undertakings are to disclose about the following **social and human rights factors**:
- (i) equal treatment and opportunities for all, including gender equality and equal pay for work of equal value, training and skills development, the employment and inclusion of people with disabilities, measures against violence and harassment in the workplace, and diversity;
 - (ii) working conditions, including secure employment, working time, adequate wages, social dialogue, freedom of association, existence of works councils, collective bargaining, including the proportion of workers covered by collective agreements, the information, consultation and participation rights of workers, work-life balance, and health and safety;
 - (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, including the UN Convention on the Rights of Persons with Disabilities, the UN Declaration on the Rights of Indigenous Peoples, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work and the fundamental conventions of the International Labour Organization, the European Convention for the protection of Human Rights and Fundamental Freedoms, the European Social Charter, and the Charter of Fundamental Rights of the European Union;
- (c) specify the information that undertakings are to disclose about the following **governance factors**:
- (i) the role of the undertaking's administrative, management and supervisory bodies with regard to sustainability matters, and their composition, as well as their expertise and skills in relation to fulfilling that role or the access such bodies have to such expertise and skills;
 - (ii) the main features of the undertaking's internal control and risk management systems, in relation to the sustainability reporting and decision-making process;
 - (iii) business ethics and corporate culture, including anti-corruption and anti-bribery, the protection of whistle-blowers and animal welfare;
 - (iv) activities and commitments of the undertaking related to exerting its political influence, including its lobbying activities;

- (v) the management and quality of relationships with customers, suppliers and communities affected by the activities of the undertaking, including payment practices, especially with regard to late payment to small and medium-sized undertakings.
- 13 The secretariat considers that with regards to the sustainability matters to be covered in listed SMEs ESRS, they shall be the same as for ESRS for large undertakings defined in art. 29b (2). This means the sustainability matters related to environmental, governance and social factors.**
- 14 With regards to the topics and sub-topics the secretariat understands that discretion may apply to take into account the principles of simplification and proportionality introduced by the legislator for listed SMEs ESRS. Hence a limited number of topics and sub-topics may be covered by listed SMEs ESRS. The secretariat suggests that one discretion criteria that could be used are the Taxonomy Regulation and the SFDR PAIs. This suggestion is based on the fact that recital 17 and recital 21 specifically refer to SFDR and Taxonomy regulation as necessary disclosures for listed SMEs ESRS. In the Issues Paper 04-01 this proposal is presented with the questions to SR TEG members on whether they support this approach or if they suggest other approaches, considering the impact on Set 1 ESRS.
- 15 According to this rationale, the secretariat has identified that topics in listed SMEs ESRS would cover the following
- i. For environmental matters: the same topics as the ones covered by ESRS (i.e. Appendix B ESRS 1). This provides alignment with the environmental objectives in Taxonomy Regulation.
 - ii. For social matters: topics may be limited to the ones related to SFDR PAIs. This materialises in: a) own work force
 - iii. For governance matters: topics may be limited to the ones related to SFDR PAIs. This materialises in: a) business conduct.
- 16 The table below provides a tentative summary of topics and subtopics to be covered in listed SMEs ESRS according to the above recommendation.

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Tentative Topic	Tentative Sub-topic (SFDR PAIs / Taxonomy Regulation)
Climate change	<ul style="list-style-type: none"> • Energy consumption and production (SFDR PAI table 1, indicator n.5 and n.6 and table 2 indicator n.3 and n.19) • GHG emissions (SFDR PAI table 1, indicator n.1, n.2, n.3 and n.4 and table 2 indicator n.4)
Pollution	<ul style="list-style-type: none"> • Pollution of air (SFDR PAI table 2, indicator n.2 and n.3) • Pollution of water (SFDR PAI table 1, indicator n.8) • Pollution of soil (SFDR PAI table 1, indicator 9 and table 2, indicator n.1)
Water and marine resources	<ul style="list-style-type: none"> • Water withdrawals (SFDR PAI table 2 indicator n.7) • Water consumption (SFDR PAI table 2 indicators n. 7 and n. 6) • Water use (SFDR PAI table 2 n.6) • Habitat degradation and intensity of pressure on marine resources (SFRD PAI table 2 indicator n.8)
Biodiversity ecosystems and	<ul style="list-style-type: none"> • Direct impact drivers of biodiversity loss (SFDR PAI table 1 indicator n.7 • Impacts on the state of species (SFDR PAI table 2, indicator n. 14) • Impacts on the extent and condition of ecosystems (SFDR PAI table 2 indicators n.10, n,11, n,12 and n.15)
Circular economy	<ul style="list-style-type: none"> • Depletion of non-renewable resources (SFDR PAI table 2 indicator n.13) • Circular business models (SFDR PAI table 3 indicator n.20 and n,21) • Waste (SFDR PAI table 1 indicator n.9)
Own workforce	<ul style="list-style-type: none"> • Working conditions (SFDR PAI table 3 indicator n. 1, n.2, n.3 and n.5) • Equal treatment and opportunities for all (SFDR PAI table 1 indicator n.12 and n.13, table 3 indicator n.7 and n.8) • Human rights, fundamental freedoms, democratic principles (SFDR PAI table 1 indicator n.10 and n.11; table 3 indicator n.9, n. 10 and n. 11, n.12, n.13 and n.14)
Business conduct	<ul style="list-style-type: none"> • Protection of whistle-blowers (SFDR PAI table 3 indicator n.6, • Corporate culture (SFDR PAI table 1 indicator n. 14) • Management of relationships with suppliers (SFDR PAI table 2 indicator n.4) • Corruption and bribery (SFDR PAI table 3 indicator n. 15, n.16 and n,.17)