

Pascal Durand
European Parliament
Bât. Altiero Spinelli
60, rue Wiertz, 1047
Brussels, Belgium

Brussels, Tuesday, 14 December 2021

Dear Mr Durand,

We are writing to you on behalf of the Sustainable Finance Task Force of the American Chamber of Commerce to the European Union (AmCham EU). This Task Force was established in 2018 and brings together financial and non-financial corporates to engage with EU policy makers on the challenge of tackling the energy and climate transition.

AmCham EU believes that there is huge potential in harnessing capital flows for sustainable investment. The goal of our Task Force is to leverage the expertise and experience of businesses from across our membership with the technical insight of the transatlantic financial services sector. This uniquely cross-sectoral group of businesses intends to act as a trusted and valuable partner for policymakers throughout the implementation of initiatives laid out in the European Commission's Sustainable Finance Action Plan. Our engagement with the Sustainable Finance agenda is guided by our three core principles: regulatory certainty and economic stability, evidence-based policy and international openness.

In the context of the Corporate Sustainability Reporting Directive (CSRD), we would like to communicate the reflections of our Task Force on the question of disclosure. We outlined our support for the CSRD's objectives in [our previous position](#), where we highlighted the Directive's relevance for improved environmental, social and governance (ESG) disclosures, leading to greater relevance, comparability and reliability of ESG reporting across the EU.

We recognise that the new reporting requirements would entail a significant change for preparers of disclosure. A proportionate approach which balances the growing demand for ESG data from the investment and wider stakeholder community with the growing burden companies face in gathering, preparing, assuring and reporting such data is therefore needed.

Building on our existing position, we would therefore like to share additional concrete recommendations with you as laid out in the annex to this letter, focusing on:

- Scope,
- International convergence,



- Dual listed securities,
- Timeline and taxonomy alignment,
- Equivalence,
- Consolidated reporting,
- The role of auditors in providing assurance and connectivity to financial information,
- Management reports of third country entities,
- The role of the European Financial Reporting Advisory Group (EFRAG).

We hope that these points might be useful for your important work going forward. We would welcome an opportunity for dialogue with you in a roundtable format. If this would be suitable, please do not hesitate to contact Maira Madala (MML@amchameu.eu) at the AmCham EU secretariat to propose dates most suitable for you.

Yours sincerely,

David Henry Doyle

Chair, Sustainable Finance Task Force
American Chamber of Commerce to the EU

Head of Government Affairs & Public Policy, EMEA
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Brian Fox
Vice-Chair, Sustainable Finance Task Force
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Vice President
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Jane Gimber
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Our position

CSRD recommendations



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3 trillion in 2020, directly supports more than 4.8 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Issues:

Scope

Explanation: The initial draft report from the Parliament proposed to expand the scope of the CSRD to entities that are **not established in the territory of the Union when they operate in the internal market selling goods or providing services.**

This would force entities not established in the EU to report according to EU sustainability reporting rules, which could lead to potential conflict with their national rules. In addition, this may not be the right reporting scope to allow for meaningful assessment of a company's sustainability performance.

Recommendation: In line with the proportionality principle and the impact assessment carried out when drafting the proposed legislation, we strongly support the retention of the original scope of the Commission proposal and we recommend that it be kept. AmCham supports applying CSRD only to entities established in the EU and not to entities from outside the EU that simply operate in the EU.

International Convergence

Explanation: In order to ensure that the reporting provides a **meaningful and holistic view** of the **sustainability profile** of an undertaking's global operation, international convergence is key. Additionally, **international convergence** of reporting standards will also reduce complexity and cost.

The specific reference to international standards in the CSRD raises the prospect of increased global consistency of sustainability reporting and reduced fragmentation between jurisdictions. The recent announcement of the formation of a new International Sustainability Standards Board (ISSB) by the International Financial Reporting Standards (IFRS) Foundation represents important momentum, which should be seized for increased cooperation at the international level on a global baseline for sustainability reporting standards.

Recommendation: EFRAG and the IFRS Foundation should coordinate and work together as early as possible to agree on an international global baseline for sustainability reporting. This should be reflected by a coordination mechanism embedded in their respective due processes. We support the development of a Memorandum of Understanding to coordinate work, and the participation of EFRAG and the International Sustainability Standards Board (ISSB) in the respective consultative groups.

Third Country Securities listed on EU Markets

Explanation Listings of third country firms captured in scope.

Recommendation The impact of applying CSRD requirements to non-EU corporates who have listed debt and/or equity securities on EU exchanges should also be reconsidered. Applying CSRD rules to these listed securities could make EU markets less attractive for listing. In many cases, trading volumes in these securities can be thin. Therefore, overly prescriptive

requirements could result in non-EU firms withdrawing from EU secondary listings rather than incur additional costs associated with CSRD disclosures. We propose that the scope should apply to third country companies with shares listed on an exchange in the EU, where those shares and their trading activity are not considered non-systematic, ad-hoc, irregular and infrequent (according to Article 23 paragraph 1 [a] of the Regulation 600/2014). This would provide a more proportionate scope of companies which have shares listed on EU exchanges as opposed to the proposal to capture entities with any listed transferrable securities. This approach would be consistent with other jurisdictions' initial approaches to sustainability reporting, eg the UK's proposed approach which only requires issuers of listed shares on UK exchanges to comply with mandatory Task Force on Climate-related Financial Disclosures (TCFD) reporting requirements.

Timeline – Article 5 Transposition

Explanation

The timeline is ambitious and may lead to low quality of reporting if companies do not have sufficient time to clearly understand the reporting standards and set up robust reporting systems.

The need to set up robust and appropriate systems applies even more in the case of the Key Performance Indicators reported under Art.8 of the Taxonomy, due to the important innovation brought by this new framework. Furthermore, companies should be given the time required to develop their transition plans, on which they will be reporting on.

Recommendation

We believe that the text should be amended to allow for reporting to apply at least one year later than proposed:

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~~ 2024.

Equivalence Principle – Art. 2, Paragraph (3) amendments to Article 23(4) of the Transparency Directive

Clarification

As drafted, an EU subsidiary of a parent company established in a third country can only report at group level, if the reporting standards and the legal regime in the third country are considered equivalent to EU regimes.

We would like to understand how the mechanism for the determination of the equivalence of sustainability reporting standards used by non-EU issuers and applicable legal regimes would work in practice and who would take the necessary decisions on such equivalence.

Reporting obligations of EU subsidiaries of a parent company established in a third country will hinge on whether the consolidated sustainability report of the parent is considered equivalent to EU regimes. More meaningful disclosures will result from more holistic consolidated reporting.

The result of not being able to report at a parent level when equivalent legally binding rules do not exist in that third country of establishment means that potentially multiple

large EU-based subsidiaries would need to produce reports that are not meaningful to investors or other stakeholders, as they will only provide a fragmented legal entity based view of the corporation. Also, the cost for non-EU based preparers will be multiplied by the number of large EU subsidiaries vs their EU headquartered peers that can report at the parent level only.

The focus for equivalence should not be at the level of the legally binding rules of the third country, but it should be assessed at the level of the alignment of the individual report by the parent with EU reporting standards and expectations as certified by an external auditor.

Parent Level Disclosure and Consolidated Reporting

Explanation

For companies with complex corporate structures, requirements to report at a single entity level per jurisdiction will give rise to disjointed and potentially misleading disclosures about the sustainability performance of the overall business.

For example, where an overseas parent company has multiple subsidiaries in a jurisdiction, all such entities may need to report separately due to the current definition of equivalence based on legally binding rules of the third country. This would distort the overall performance of the business and making the disclosures less meaningful. Additionally, there may be scope for entities to present misleading reporting in the EU by splitting out less sustainable aspects of their business into corporate entities that do not themselves need to report, thereby overstating the sustainability performance of the reporting entity.

Recommendation

In this context, it is vital to underline the importance of consolidated reporting on sustainability information at the parent company level (or as required for any issuing subsidiary under applicable listing rules). Providing this information as much as possible at parent level allows for a more holistic view of a company's sustainability strategy and transition path, as well as more efficient reporting processes and proportionality for smaller companies. Third country parent reporting is especially relevant for corporate groups with multiple EU subsidiaries but no common EU sub-parent.

The options to consolidate a report at local or regional group level should, however, remain so that companies can chose the option that would make most sense for them and result in meaningful sustainability-related disclosures. In addition, companies should have the ability to consolidate reporting for sustainability-related data independent of the way they decide to report financial information.

Separation of Audit and Assurance Engagement (Amendment 8 and 49)

Explanation

The initial draft report from the Parliament proposes to prohibit companies from engaging their statutory auditor for the assurance of the sustainability report. We disagree with this proposal as it would lead to less connectivity of sustainability information to financial reporting, which is the core objective of the CSRD.

This proposal is contrary to the interconnectivity of financial and sustainability information, which is required by investors and regulators. If disconnected, there is a

high risk that sustainability will not drive decision-making with the same effectiveness as if it were closely connected to financial information.

The sustainability assurance providers will need to understand the company reporting processes and controls, which the auditor is already familiar with. This will lead to overlapping work and additional costs. Companies should remain free to choose the providers which most fit their need. This prohibition could be even more difficult for companies that already receive this assurance on request of their stakeholders or in countries where this is already required by legislation.

Recommendation We strongly support the original Commission’s proposal as drafted and would like to propose that the suggested prohibition on companies from engaging their statutory auditor for the assurance of the sustainability report be removed.

Minimum Quality of Assurance – Art. 1(10) b

Explanation We welcome the option to allow independent assurance service providers to sign the assurance conclusion. We notice, however, a gap between the intention to ensure consistent outcomes in the assurance of sustainability reporting, clearly expressed in the explanatory memorandum and recital 54, and the proposed legal text in Art. 34(3). We believe that it would be reasonable for a minimum level of quality to be guaranteed regardless of the location of the reporting entity and whether the conclusion is signed by the statutory auditor or an independent assurance service provider.

Recommendation We have identified five conditions for an effective and consistent assurance framework which we recommend embedding in the Directive, so that Member States must always apply them to the assurance of sustainability reporting:

- Independence,
- Competence (required skills),
- Adequate quality control measures,
- Use of standards for accepting, conducting and reporting on the engagement,
- Public oversight regime.

Disclosure Placement/Definition of Management Report

Explanation For US-headquartered companies looking to implement the parent level reporting - if allowable under adjusted rules around equivalence -, we would like to raise the challenges of including sustainability information in **existing management reporting obligations for these companies (eg Securities and Exchange Commission [SEC] filings)**. This could potentially result in significant obstacles to US companies. For example, in some instances the data supporting the sustainability reporting may not be readily available to meet the existing reporting deadlines in their home jurisdiction. Further, the SEC governs the information to be included in the Form 10-K. Thus, it is unclear how the European Commission’s

option of providing a consolidated sustainability report in the management report and requiring management's certifications would be permissible.

Recommendation The option should be given to companies opting for consolidated reporting to submit their report separate to the local 'management report'. The option to provide a separate report should anyway be without prejudice to the obligations of the group's EU subsidiaries to publish sustainability information in their management reports.

EFRAG

Clarification High quality reporting standards require significant resources to develop. The governance and funding structure of EFRAG should reflect the required robustness and due process to become a credible standard setter. Public funding should have an important role in order to preserve independence (in fact and appearance) and in consideration of the public good feature of technical standards.

Recommendation EFRAG should be given adequate resources, including public funding, to build and maintain the necessary expertise to fulfil its role under the CSRD.