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FA NB – öffentliche SITZUNGSUNTERLAGE

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Vorbemerkungen

Einleitung



DRAFT COMMISSION NOTICE
on the interpretation of certain legal provisions in Directive 2013/34/EU (Accounting Directive), Directive 2006/43/EC (Audit Directive), Regulation (EU) No 537/2014 (Audit Regulation), Directive 2004/109/EC (Transparency Directive), Commission Delegated Regulation (EU) 2023/2772 (first set of European Sustainability Reporting Standards "first ESRS delegated act"), and Regulation (EU) 2019/2088 (Sustainable Finance Disclosures Regulation "SFDR") as regards sustainability reporting

This set of Frequently Asked Questions (FAQs) clarifies the interpretation of certain provisions on sustainability reporting introduced by the Corporate Sustainability Reporting Directive "CSRD" (Directive (EU) 2022/2464) into the Accounting Directive (Directive 2013/34/EU), the Audit Directive (Directive 2006/43/EC), the Audit Regulation (Regulation (EU) No 537/2014), and the Transparency Directive (Directive 2004/109/EC) with the aim of facilitating their implementation by undertakings. It also clarifies certain provisions of the Sustainable Finance Disclosures Regulation "SFDR" (Regulation (EU) 2019/2088).

This set of FAQs also includes a limited number of clarifications concerning the interpretation of certain provisions of the first set of European Sustainability Reporting Standards "ESRS" (Commission Delegated Regulation (EU) 2023/2772), where legal interpretation from the Commission has been deemed to be necessary. Undertakings and other stakeholders may also wish to consult the implementation guidance on ESRS published by EFRAG, the multistakeholder advisory body tasked with advising the Commission on ESRS.¹

Through this set of FAQs, the Commission intends to facilitate the compliance of stakeholders with the regulatory requirements in a cost-effective way and to ensure the usability and comparability of the reported information on sustainability. By providing greater clarity and certainty to companies, this set of FAQs will contribute to the Commission's objective of reducing administrative burdens on undertakings associated with sustainability reporting². The Commission may update these FAQs where appropriate.

The replies to the FAQs contained in this Notice clarify the provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor introduce any additional requirements. These FAQs are merely intended to assist undertakings in the implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in this Notice cannot prejudice the position that the Commission might take before the Union and national courts.

¹ www.efrag.org EFRAG has published implementation guidance on materiality assessment, on value-chain reporting and on the list of datapoints contained in ESRS. EFRAG is currently developing implementation guidance on climate transition plans. In addition, EFRAG has established an online Q&A platform through which undertakings and other stakeholders can submit technical questions on ESRS.

² In order to rationalise reporting obligations, the Commission has made full use of its empowerment in Article 3(13) Accounting Directive to adopt Commission Delegated Directive (EU) 2023/2775 of 17 October 2023 amending Directive 2013/34/EU of the European Parliament and of the Council (OJ L 2023/2775, 21.12.2023) to adjust the size criteria applicable to the definition micro, small, medium-sized and large undertakings or groups for the effects of inflation. This has reduced the number of undertakings subject to sustainability reporting requirements under the Accounting Directive – and, consequently, under Article 8 of Regulation (EU) 2020/852 (Taxonomy Regulation).

- Am 7.8.2024 hat die EU-Kommission [FAQs](#) mit Klarstellungen zu Anforderungen der CSRD (Richtlinie (EU) 2022/2464), ESRS (Delegierte Verordnung (EU) 2023/2772) und SFDR (Verordnung (EU) 2019/2088) veröffentlicht.
- Mit den FAQs möchte die EU-Kommission solche Zweifelsfragen adressieren, bei denen eine Interpretation (*legal interpretation*) durch die EU-Kommission als erforderlich angesehen wurde.
- Ziel ist es, Unternehmen mehr Rechtssicherheit bei der Umsetzung der Anforderungen zu geben und damit die Vergleichbarkeit der Nachhaltigkeitsberichte zu erhöhen.
- Diese Unterlage enthält vom Mitarbeiterstab ausgewählte Klarstellungen. Die Auswahl beschränkt sich dabei auf FAQs mit unmittelbarem Bezug zur Berichterstattung; FAQs zur Prüfung von Nachhaltigkeitsberichten sind in der Auswahl nicht berücksichtigt.

Vorbemerkungen

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Insgesamt 90 Fragen

Nachhaltigkeitsinformationen gem. Artt. 19a/29a BilanzRI



Konsolidierung (SNCI-Fall)

- 10) **If an SNCI is a parent undertaking of a large group but is not required to issue consolidated financial statements due to all its subsidiaries being immaterial, is this SNCI still required to prepare and publish a consolidated sustainability statement?**

No. Article 29a of the Accounting Directive applies to parent undertakings of large groups. However, if a parent undertaking of a large group is exempted from preparing and publishing consolidated financial statements based on Article 23(10) of the Accounting Directive (i.e. because it only has subsidiary undertakings which are immaterial, both individually and collectively, or because all its subsidiary undertakings can be excluded from consolidation by virtue of Article 23(9) of the Accounting Directive), that parent undertaking is not required to prepare and publish a consolidated sustainability statement. However, to the extent that such parent undertaking is itself a large undertaking as defined in Article 3(4) of the Accounting Directive and would therefore fall within the scope of Article 19a of the Accounting Directive, that undertaking must prepare and publish an individual sustainability statement in accordance with Article 19a of the Accounting Directive. This individual sustainability statement must consider its subsidiaries when reporting about its value chain in accordance with ESRS.

38) What are the format requirements that undertakings need to comply with pending the adoption by the European Commission of a digital taxonomy for the mark-up of the sustainability statement?

Article 29d of the Accounting Directive requires undertakings that have to publish a sustainability statement in their management report to prepare their management report in the electronic reporting format specified in Article 3 of the ESEF Delegated Regulation (i.e. in XHTML) and to mark-up the sustainability statement within the management report in accordance with the specific digital taxonomy that will be adopted by way of an amendment to the ESEF Delegated Regulation. **Until the adoption of this digital taxonomy, undertakings are not required to mark-up their sustainability statements. Considering that the sustainability statement will become machine-readable only once it is both included in an XHTML document and marked-up with a digital taxonomy, pending the adoption of the digital taxonomy undertakings are also not required to prepare the management report in XHTML.**

Nachhaltigkeitsinformationen gem. Artt. 19a/29a BilanzRI



ESRS – Reasonable Effort

29) ESRS require undertakings to use estimates if they cannot obtain all necessary value chain information after having made reasonable efforts to do so (ESRS 1, General requirements, paragraph 69). What constitutes “reasonable effort”?

Paragraph 65 of ESRS 1 (General requirements) sets out the purpose of including value chain information in the sustainability statement. It states that “*the undertaking shall include material value chain information when this is necessary to: (a) allow users of sustainability statements to understand the undertaking’s material impacts, risks and opportunities; and/or (b) produce a set of information that meets the qualitative characteristics of information*”

Paragraph 70 of ESRS 1 (General requirements) recognises that it may be challenging to obtain value chain information when the relevant actor in the value chain is an SME or another undertaking that is itself not subject to the reporting requirements of the Corporate Sustainability Reporting Directive.

Paragraph 68 of ESRS 1 (General requirements) states that “*an undertaking shall obtain the necessary upstream and downstream value chain information depending on various factors, including the level of control that it exercises over the activities of its upstream and downstream value chain in*”

Paragraph 69 of ESRS 1 (General requirements) states: **“There are circumstances where the undertaking cannot collect the information about its upstream and downstream value chain as required by paragraph 63 after making reasonable efforts to do so. In these circumstances, the undertaking shall estimate the information to be reported about its upstream and downstream value chain, by using all reasonable and supportable information, such as sector-average data and other proxies.”**

Paragraph 72 clarifies that: “*The incorporation of estimates made using sector-average data or other proxies shall not result in information that does not meet the qualitative characteristics of information (see chapter 2 and section 7.2 Sources of estimation and outcome uncertainty of this Standard).*”

Paragraph 71 of ESRS 1 (General requirements) makes a distinction between reporting on policies, actions and targets, and reporting on metrics. With regard to policies, actions and targets, it states that the undertaking shall report value chain information “*to the extent that those policies, actions and targets involve actors in the value chain*”. With reference to metrics, it states that “*in many cases, in particular for environmental*”

ESRS – Reasonable Effort

29) ESRS require undertakings to use estimates if they cannot obtain all necessary value chain information after having made reasonable efforts to do so (ESRS 1, General requirements, paragraph 69). What constitutes “reasonable effort”?

It is expected that undertakings will more frequently have recourse to the use of estimates in the first years of application of the reporting requirements and that the use of estimates will become less common as the ability of undertakings and the actors in their value chains to share sustainability information improves over time.

In all cases the undertaking should consider whether the use of estimates is likely to affect the quality of the reported information. The use of estimates could, in some

When considering the specific facts and circumstances of the undertaking and the conditions of the external environment in which it operates in order to determine reasonable effort, the following criteria could offer useful guidance. Any one of these criteria could on its own be sufficient to determine that reasonable effort has been made, or the criteria could be applied in combination.



- Size and resources of the reporting undertaking in relation the scale and complexity of its value chain
- Technical readiness of the reporting undertaking to collect value chain information
- Availability of tools to access and share value-chain information
- Size and resources of the actor in the value chain
- Technical readiness of the actor in the value chain
- Level of influence and buying power
- Proximity of the actor in the value chain (connected to the level of influence)

ESRS – Bedeutung des LSME/VSME

30) **What should an SME expect to receive in terms of requests for sustainability information as a consequence of the CSRD and ESRS?**

environmental or sustainability certification or reporting schemes) and SMEs that are 1st tier suppliers or customers of undertakings that fall within the scope of the CSRD may be exposed to higher expectations to have and share sustainability information.

EFRAG is currently developing two sustainability reporting standards for SMEs: a mandatory one for listed SMEs (LSME ESRS) and a voluntary one for non-listed SMEs (VSME). **LSME ESRS will establish the maximum level of sustainability information that ESRS can require an undertaking that falls within the scope of the CSRD to obtain from SMEs in its value chain. VSME will be designed to become a reference point for all actors in the market, to ensure that the reporting effort of CSRD and non-CSRD undertakings is proportionate.**

ESRS – Anwendbarkeit des LSME

- 8) **If a Small and Non-Complex Institution (SNCI) is a parent company of a large group, can that SNCI benefit from the derogation under Article 19a(6) of the Accounting Directive and prepare sustainability reporting in accordance with LSME ESRS?**

If an undertaking (regardless of the size or the specific type, e.g. including SNCIs) is a parent undertaking of a large group, it must publish a consolidated sustainability statement under Article 29a of the Accounting Directive prepared in accordance with ESRS. **The possibility to use LSME ESRS in accordance with Article 19a(6) of the Accounting Directive only applies to SMEs (excluding micro-undertakings) with securities listed on an EU regulated market and to small and non-complex institutions, captive insurance undertakings or captive reinsurance undertakings (provided they are either large undertakings or SMEs - excluding micro-undertakings - with securities listed on an EU regulated market for the preparation of their individual sustainability statement. See also FAQ 10).**

Nachhaltigkeitsinformationen gem. Artt. 19a/29a BilanzRI



Übergangsbestimmungen – Nichtfinanzielle Erklärung

- 7) **If a Small and Non-Complex Institution (SNCI) is currently required to report non-financial information under Directive 2014/95/EU (NFRD), does it have to continue reporting non-financial information in accordance with the provisions of NFRD until the CSRD regime starts applying to small and non-complex institutions (i.e. from financial years starting on or after 1 January 2026)?**

Yes. Based on Article 5(2) of the CSRD, a small and non-complex institution that is a large undertaking or an SME (excluding micro-undertakings) with transferable securities admitted to trading on an EU regulated market will be required to report sustainability information in accordance with ESRS (or, alternatively, with LSME ESRS) starting from financial year 2026. Therefore, a small and non-complex institution that is currently required to report non-financial information under Article 19a of the Accounting Directive as introduced by Directive 2014/95/EU (NFRD)⁸³ (i.e. because, besides being a credit institution, it is also a large undertaking exceeding on its balance sheet dates the criterion of an average number of 500 employees during the financial year) would have to continue reporting under the NFRD regime until the CSRD regime becomes applicable to small and non-complex institutions (i.e. from financial year 2026).

Nachhaltigkeitsinformationen gem. Artt. 19a/29a BilanzRI



Übergangsbestimmungen – Möglichkeit zum Opt-out

- 16) Which companies may opt out of the obligation to report sustainability information for financial years starting before 1 January 2028 pursuant to Article 19a(7) of the Accounting Directive?**

Based on Article 19a(7) of the Accounting Directive, SMEs (excluding micro-undertakings) with transferable securities admitted to trading on an EU regulated market may decide not to report sustainability information under Article 19a of the Accounting Directive for financial years starting before 1 January 2028 (e.g. for financial years 2026 and 2027). In such cases, the SME shall, nevertheless, briefly state in its management report why the sustainability reporting was not provided.

This opt-out also applies to small and non-complex institutions, as well as to captive insurance and reinsurance undertakings, provided they are SMEs (excluding micro-undertakings) with transferable securities admitted to trading on an EU regulated market.

- 33) If an SME with transferable securities admitted to trading on an EU regulated market avails of the 2-year opt-out from sustainability reporting until 2028, does it have to still include Article 8 Taxonomy disclosures in its management report?**

No. Article 8 Taxonomy Regulation applies to all undertakings required to prepare and publish a sustainability statement under Articles 19a and 29a of the Accounting Directive. However, if an SME (excluding micro-undertakings) with transferable securities admitted to trading on an EU regulated market decides not to include in its management report the sustainability statement under Article 19a(7) of the Accounting Directive – where Article 8 Taxonomy Regulation disclosures would need to be included – it is not required to disclose Article 8 Taxonomy Regulation disclosures.

Nachhaltigkeitsinformationen gem. Artt. 19a/29a BilanzRI



Konzernbefreiung – Referenzierung bei abweichenden Veröffentlichungszeitpunkten

- 20) Does the consolidated management report/consolidated sustainability reporting of the parent undertaking have to be already published when its subsidiary publishes its own management report in order for the subsidiary to be exempted from publishing its own sustainability statement?**

No. For the subsidiary undertaking to be exempted from publishing its own sustainability statement in accordance with Articles 19a(9) or 29a(8) of the Accounting Directive, the management report that the subsidiary undertaking publishes must contain a weblink to the consolidated management report or consolidated sustainability reporting of the parent undertaking⁹⁰. **Where that consolidated management report or consolidated sustainability reporting is not yet available at the time of publication of the subsidiary undertaking's management report, the subsidiary undertaking claiming the exemption can make reference in its management report to a general weblink at which the relevant documents will be available in the future.** The Union subsidiary could consider, for instance, obtaining from the parent undertaking a declaration that it guarantees the commitments entered into by the subsidiary undertaking and publishing that declaration together with its management report within the deadline set by its own Member State.

Auswirkungen unterschiedlicher Befreiungsregelungen – Formvorgaben

- 25) **How can an undertaking comply with the obligation to prepare and publish an individual or a consolidated sustainability statement when it is not required to prepare and publish an individual or a consolidated management report?**

An undertaking that must report sustainability information and that is not required to prepare and publish an individual or a consolidated management report **may publish the individual or consolidated sustainability statement in a separate document. This principle also applies to the consolidated sustainability reporting of a third-country parent undertaking for its subsidiaries to be exempted under Articles 19a(9) and 29a(8) of the Accounting Directive.**

However, that separate document – which includes the individual or consolidated sustainability statement – must comply with the **format and the mark-up requirements** set out in Article 29d of the Accounting Directive⁹³.

- 26) **How can an undertaking comply with the obligation to prepare and publish a consolidated sustainability statement when it is exempted from preparing consolidated financial statements?**

An undertaking that must prepare and publish a consolidated sustainability statement without having to prepare and publish the corresponding consolidated financial statements will need to **include in the consolidated sustainability statement the financial information necessary to understand the undertaking's impacts on sustainability matters and to understand how sustainability matters affect the undertaking's development, performance and position**⁹⁴.

Informationen zu Principal Adverse Impact Indicators – Wesentlichkeitsfilter

90) **May financial market participants assume that any indicator reported as non-material by an investee undertaking subject to the CSRD does not contribute to the corresponding indicator of principal adverse impacts in the context of the SFDR disclosures?**

Yes. Financial market participants may assume that any indicator reported as non-material by an investee company applying ESRS does not contribute to the corresponding indicator of principal adverse impacts in the context of the SFDR disclosures, i.e. the value of that investment does not need to be included in the numerator of the given SFDR principal adverse impact indicator.

Article 29b(5) point (b) of the Accounting Directive requires the Commission, to the greatest extent possible, to take account of 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 when adopting sustainability reporting standards.

As a consequence of the obligation set out in the CSRD to take into account the information needs of financial market participants, any indicator reported as non-

material by an investee undertaking subject to the CSRD requirements is relevant information and may be considered as not contributing to principal adverse impacts under the SFDR.

Financial market participants will find this information in CSRD reporting as ESRS 1 paragraph 35 requires that when an undertaking considers that a specific datapoint derived from the SFDR is not material, the undertaking explicitly states that the information in question is “not material”¹¹¹.

In addition, ESRS 2, paragraph 56 requires undertakings subject to the CSRD to include a table of all the datapoints that derive from other EU legislation, including the SFDR, indicating where they can be found in the sustainability statement and indicating “Not material” in the table for those that the undertaking has assessed as not material, in accordance with ESRS 1 paragraph 35.

Nachhaltigkeitsinformationen gem. Art. 40a BilanzRI



Veröffentlichung des Nachhaltigkeitsberichts für Drittstaatenunternehmen

- 43) Does each EU subsidiary or EU branch have to publish a sustainability report under Article 40a of the Accounting Directive? Or is it sufficient that only one of the EU subsidiaries or branches publishes the report and the other ones simply provide a link to that sustainability report?**

Article 40a of the Accounting Directive requires that at least one sustainability report be disclosed by one subsidiary or branch in each Member State (“A Member State shall require that a subsidiary undertaking established in its territory [...]). To avoid double reporting by the subsidiaries and branches of the same third-country undertaking, Member States may allow for one subsidiary or branch established or located in its territory to comply with the obligation in Article 40a of the Accounting Directive by providing a link to the sustainability report published by another Union subsidiary or branch of the third-country undertaking.

Nachhaltigkeitsinformationen gem. Art. 40a BilanzRI



Anzuwendende Standards für den Nachhaltigkeitsbericht für Drittstaatenunternehmen

44) Which ESRS should be used for the preparation of the sustainability report under Article 40a of the Accounting Directive?

The sustainability report referred to in Article 40a of the Accounting Directive must be prepared in accordance with the sustainability reporting standards to be adopted under Article 40b of the Accounting Directive.

By way of derogation, Article 40a(2) second subparagraph of the Accounting Directive allows the sustainability report to be prepared in accordance with the sustainability reporting standards adopted under Article 29b of the Accounting Directive (i.e. ESRS) or in a manner equivalent to the sustainability reporting standards adopted under Article 29b of the Accounting Directive, as determined by a Commission decision on equivalence. This provision should be read in the sense that a third-country parent undertaking falling under the scope of Article 40a of the Accounting Directive may choose to publish a consolidated sustainability statement under Article 29a of the Accounting Directive (prepared in accordance with the standards adopted under Article 29b), instead of having its EU subsidiary or EU branch publish a sustainability report at the group level under Article 40a of the Accounting Directive. In that case, the exemptions for the EU subsidiary set out in Articles 19a(9) and 29a(8) of the Accounting Directive would apply.

Weitere Anforderungen für Drittstaatenunternehmen

Möglichkeit zur Konzernbefreiung für TU von Drittstaatenunternehmen



- 86) If a third-country parent undertaking publishes on a voluntary basis a consolidated sustainability statement to allow its subsidiaries to avail of the exemptions under Articles 19a(9) and 29a(8) of the Accounting Directive, does that consolidated sustainability statement need to be included in a consolidated management report or can it be a standalone document?**

The third-country parent undertaking that complies with Article 29a of the Accounting Directive on a voluntary basis **may include the consolidated sustainability statement in a separate document.**