



Ms Mairead McGuinness
Commissioner for Financial services, financial stability and Capital Markets Union
Rue de la Loi 200
1049 Brussels
Belgium

Brussels, 21 April 2022

Dear Commissioner McGuinness,

The undersigned associations write to provide feedback on the proposed Corporate Sustainability Reporting Directive (CSRD) and related Article 8 Taxonomy disclosures. In particular, we would like to highlight challenges that both EU and non-EU companies face with respect to the extraterritorial application of EU sustainability reporting requirements and which we believe can be solved in trilogues by the co-legislators.

The undersigned associations represent companies headquartered in non-EU jurisdictions who are deeply committed to, and invested in, the EU. We firmly support and advocate for a strong and ambitious response to climate change and are committed to directing financial flows towards sustainable projects and supporting investments that help to achieve the UN Sustainable Development Goals.

The concerns presented in this letter relate to challenges which result from the proposed extraterritorial scope of application of the CSRD to non-EU exposures, which would affect both EU and, to a greater extent, non-EU companies. In addition to its scope including companies above certain thresholds which operate in the EU, the proposed CSRD disclosure rules would apply both to EU and non-EU domiciled multinational companies that have any type of transferable securities listed on EU regulated markets (including debt securities). The European Parliament's proposal would extend the scope even further to large third country companies with business activities in the EU which are not established in the EU and would remove the exemption to report at subsidiary level when sustainability reporting is done at consolidated level. These companies would have to report at consolidated level for their entire group operations, including those outside the EU. We would like to express our concerns at the plans to extend the scope as well as our opposition to proposals to remove the necessary exemption for subsidiaries provided for in the original Commission text.

We believe that the final CSRD must take account of ongoing developments at international level as well as the limits to what companies can report in their home jurisdictions due to lack of data and domestic regulation.

1. EU and International Interoperability on Sustainability Reporting

We believe it is of utmost importance to build an effective international framework for sustainability reporting, which will maximise the interoperability of local reporting standards, avoid fragmentation, promote greater transparency, consistency and comparability of disclosures, and reduce reporting costs. This will provide investors with high-quality sustainability information and ultimately support the EU objective of reaching climate neutrality by 2050.

In this context, we credit the EU for taking the initial initiative to make sustainability reporting more robust through the CSRD proposal. We believe that was an important factor in other jurisdictions moving forward on their own initiatives as well as the ultimate formation of the International Sustainability Standards Board (ISSB). Thus, we appreciate the EU's support for the ISSB even as it proceeds with the CSRD.

We believe that jurisdictional approaches to sustainability information outside of the EU are likely to converge around the ISSB standards under development which could form the basis for counterparty information required to meet sustainability disclosure requirements for international companies.

For example, on climate, we have noted a high degree of alignment between the standards recently proposed by the U.S. Securities and Exchange Commission (SEC) and the ISSB, which are both based on the recommendations of the Task Force on Climate-Related Financial Disclosures (TCFD). We are also encouraged that, for the climate reporting aspects of the CSRD, EFRAG has been closely engaged with the ISSB technical work and the two standards are well aligned with the exception of the EFRAG inclusion of the Taxonomy related disclosures necessitated by the overall EU sustainable finance regime. Switzerland committed in its ongoing consultation on the introduction of mandatory TCFD disclosures for large companies to review the reporting requirements in the following years to take account of the development and comparability with international sustainability reporting standards. Japan has revised its Corporate Governance Code, which encourages TCFD disclosures, and it is closely following and monitoring the development of ISSB. Finally, we also note the overall G20 and G7 support for the ISSB. Thus, there is significant positive momentum for global alignment, and we appreciate the EU efforts to maintain this collaborative spirit.

The actual degree of difficulty in meeting the CSRD requirements will depend on the final approach to the CSRD standards and whether there are significant additional requirements that go beyond the ISSB approach, particularly where those additional EU requirements relate to quantitative information. The extraterritorial application of significant additional EU specific requirements will likely create for international companies subject to the CSRD a mismatch in disclosure expectations for these firms and the underlying data available to meet these disclosures. As a spill-over effect, the lack of interoperability and further fragmentation could negatively affect Europe's attractiveness from a capital markets perspective.

The remainder of this letter explains the potential issues we see developing if not addressed in the CSRD trilogues. We propose a way for the EU co-legislators to put in place mechanisms that provide the necessary flexibility to address these issues as the global landscape for sustainability reporting continues to develop.

2. Lack of CSRD Data Outside the EU and EU Taxonomy Reporting Challenges for non-EU Exposures

According to the proposed CSRD, certain EU and non-EU headquartered corporates and financial firms will need to report sustainability information at consolidated level for their entire group operations. This would include exposures for operations in third countries where sustainability information is unlikely to be available given the absence of legal requirements for companies outside the EU to disclose the same sustainability data as companies inside the EU. Thus, this will make it very difficult, if not impossible in certain cases, for international banks subject to the CSRD to obtain sufficient information from their counterparties to fulfil the EU disclosure obligations.

Currently, the most tangible example of this challenge is the Taxonomy Article 8 reporting which came into effect in January 2022. Initial reports show there are significant practical challenges to gathering the required data outside the EU and, consequently, there are serious risks of potentially misleading information being provided by non-EU companies to end users and investors due to this inability to source the required data.

For example, our examination of the publicly available information from both EU and non-EU headquartered banks has illustrated this issue. EU headquartered banks often have non-NFRD exposures on the order of around 10% and show Taxonomy eligibility ratios in the range of 10% to 40%. Non-EU headquartered banks that are already subject to the NFRD (as is the case with some third country banks) can have non-NFRD exposures of up to 90% and report Taxonomy eligibility numbers of much less than 10% and often near 0% due to the large proportion of non-NFRD exposures.

While financial institutions are potentially able to use proxies or estimates for voluntary reporting, we have concerns about the meaningfulness of such data as well as the significant potential for liability when reporting figures that are by definition not accurate. We do not believe the production of such data will result in useful or comparable information and, critically, has the potential to mislead more than it will inform investors and other stakeholders.

3. Mandatory Location of Sustainability Reporting and Assurance

The CSRD would require mandatory location of sustainability reporting in the management report of companies. There may be challenges to achieving this for some non-EU companies given local reporting requirements in their home countries at present.

Typically, where international companies have sought to comply with international sustainability reporting frameworks such as TCFD, they have published a separate sustainability or ESG report which contains the appropriate sustainability information and mitigates conflicting requirements between home jurisdiction rules for filings and other third country or voluntary sustainability reporting. As noted above, we would strongly support the retention of the exemption for subsidiaries where there is reporting at group level, both for undertakings and parent undertakings.

We also note that the European Parliament proposes to prohibit the statutory auditor of the financial statements from providing assurance over the sustainability reporting. This requirement may put third country issuers and their group auditor in direct conflict with local legislation requiring the statutory auditor of the financial statement to provide assurance over sustainability information. For example, the US proposals include climate-related information being subject of the financial statement and ICFR audit. We recommend the EU to adopt a regime consistent with international common practice and leave companies the ability to choose the provider most suitable to their needs.

4. Equivalence Mechanism and Transitional Period

We welcome the inclusion in the CSRD proposal of an equivalence mechanism for third country sustainability reporting standards. We invite the co-legislators to further clarify how this equivalence mechanism could be used to mitigate the issues outlined in this letter.

We believe it would be helpful, for instance, for the CSRD equivalence mechanism to include a transitional period. During this transitional period the scope of sustainability reporting for both EU and non-EU companies could be limited to EU activities and EU exposures to companies that are subject to the CSRD and Taxonomy disclosure rules. This transitional period would allow more time for the Commission to assess the international standards developed by the ISSB and their uptake by other jurisdictions, including, but not limited to the proposed U.S. SEC disclosure rules, the Swiss sustainability reporting regime, and the upcoming UK Sustainability Disclosure Requirements (SDRs).

We therefore invite the co-legislators to establish in the CSRD proposal a transitional period which would allow, after the entry into force of the CSRD, third country issuers to continue using third country sustainability reporting standards or international sustainability reporting standards implemented voluntarily.

After this transitional period, the Commission would be able to make a more informed decision on the equivalence between EU standards and ISSB standards (or other national standards based on those of the ISSB).

Moreover, we would note that the current proposal does not contain any specific grandfathering provisions for existing securities, which if unaddressed, could prompt a migration of EU listed securities to other jurisdictions ahead of the effective application of the CSRD legislation. A suitable grandfathering provision would assist in minimising market disruption.

5. EU and non-EU Sustainability Reporting on non-EU Exposures/Operations

In addition to the equivalence mechanism provided by the Commission's proposal, we invite the EU co-legislators to also include in the CSRD a mechanism allowing the European Commission to address via delegated acts the practical challenges related to the proposed extraterritorial scope of application of the CSRD to non-EU exposures. Solutions adopted by the Commission could for instance include the option of alternative/substituted compliance allowing both EU and non-EU companies to comply with CSRD requirements by having the option of using the ISSB standards or other national standards based on those of the ISSB to report on non-EU exposures.

This would be consistent with how other jurisdictions have treated financial reporting. For example, in the US foreign filers are allowed to submit their financial statements based on IFRS accounting standards without requiring reconciliation to US GAAP standards.

This mechanism within the CSRD would take into consideration the ISSB standards and their (voluntary) implementation by corporates. Such approach would ensure a level playing between EU and non-EU corporates, and address the specific challenges faced by corporates in implementing EU reporting standards for their operations outside the EU.

Conclusion

In conclusion, the EU has an unprecedented opportunity to provide guidance and global leadership on sustainable finance. However, to do this it is of utmost importance that while the EU develops its framework, it does not prevent other jurisdictions from pursuing the same objectives through international standards. In the ongoing trilogue negotiations on the CSRD, we invite the EU co-legislators to carefully consider the issues highlighted in this letter and take account of the significant momentum building behind international cooperation on enhancing sustainability reporting.

Yours sincerely,

American Chamber of Commerce to the European Union (AmCham EU)

International Regulatory Strategy Group (IRSG)

Japan Business Council in Europe (JBCE)

Swiss Finance Council (SFC)

