European Economic and Social Committee

OPINION

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Non-financial information

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) 189 final – 2021/104 (COD)]

INT/938

Rapporteur: **Marinel Dănuț MURESAN**

Referral	Council of the European Union, 22/06/2021 European Parliament, 23/06/2021
Legal basis	Articles 50 and 114 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	02/09/2021
Adopted at plenary	22/09/2021
Plenary session No	563
Outcome of vote (for/against/abstentions)	226/0/7

1. **Conclusions and recommendations**

1.1 The EESC welcomes the proposal for a Corporate Sustainability Reporting Directive ("CSRD"), and considers that high-quality sustainability reporting will be a key component in the implementation of the European Green Deal, including the ambitious targets of the Fit for 55 Package.

1.2 Notably, the CSRD's expansion to cover all large companies meeting certain conditions, as well as listed SMEs, is going to support transforming the European economy in line with the Paris Agreement, as is the mandate for EFRAG to develop coherent EU Non-Financial Reporting Standards.

1.3 Following the Action Plan on Financing Sustainable Growth, the EESC welcomes the European Commission's focus on incentivising the disclosure of high-quality sustainability data by companies and financial institutions. The public and private sectors must work in tandem towards this outcome, with the legislative framework for sustainable finance and corporate reporting playing a crucial role in this regard.

1.4 The EESC would encourage the co-legislators to evaluate the operational and administrative costs involved in the gradual and voluntary inclusion of SMEs in the scope of the Directive, and to consider potential additional support measures to help offset any administrative and operational burdens for this crucial segment of the economy.

1.5 The EESC greatly welcomes the European Commission's clarification of and adherence to the principle of "double materiality", and the description thereof provided in paragraph 3 of the proposal.

1.6 The EESC supports the mandate given to the European Financial Reporting Advisory Group (EFRAG) to prepare the technical advice for developing a European non-financial reporting standard. This standard-setting process must involve all stakeholders with a material interest in the preparation and use of sustainability reporting: the relevant financial and non-financial corporate stakeholders, the social partners and civil society must be guaranteed a clear role at all stages.

1.7 The EESC would encourage the European Commission, the European Supervisory Authorities, and the co-legislators to ensure careful alignment – in terms of content and sequencing – of the different components of the sustainability reporting framework, including those covering financial institutions.

1.8 The EESC would also encourage the European Commission and EFRAG to consider how specific country-by-country reporting requirements on sustainability risks and impacts, for all in-scope entities, may encourage more granular and material disclosures.

1.9 Lastly, the EESC would encourage the European Commission to consider bolstering financial and sustainability literacy. While this proposal will ensure that companies and financial institutions are able to provide accurate data to end users, future beneficiaries, and other end investors, a complementary effort is needed to empower them to channel their savings to sustainable investments with sufficient confidence. The EESC thus welcomes the commitments made in this regard as part of the Strategy for Financing the Transition to a Sustainable Economy[1].

2. Commission proposal

2.1 The Non-Financial Reporting Directive (Directive 2014/95/EU, the NFRD), amending the Accounting Directive, was adopted in 2014[2]. Companies within the scope of the NFRD had to report in accordance with its provisions for the first time in 2018 (covering the financial year 2017).

2.2 In accordance with the NFRD, in 2017 the Commission published non-binding reporting guidelines for companies[3]. In 2019, it published additional guidelines on reporting climate-related information[4]. These guidelines have not sufficiently improved the quality of information companies disclose pursuant to the NFRD.

2.3 The European Commission committed itself to proposing a revision of the Non-Financial Reporting Directive in the European Green Deal and its 2020 Work Programme[5].

2.4 In March 2018, the European Commission released the Action Plan on Financing Sustainable Growth[6], which reiterated the need for further standardisation of the non-financial information to be provided by corporates, necessary to guide investment decisions. Subsequent to the Action Plan, the European Commission released three legislative proposals that have further defined the data required from corporate entities for this purpose, namely, the Taxonomy Regulation, the Sustainable Finance Disclosures Regulation, and the Low-Carbon Benchmark Regulation.

2.5 In its May 2018 own-initiative report on sustainable finance, the European Parliament called for the further development of reporting requirements in the framework of the Non-Financial Reporting Directive (NFRD)[7]. In its December 2020 resolution on sustainable corporate governance, it welcomed the Commission's commitment to reviewing the NFRD, called for an extension of the scope of the NFRD to include additional categories of companies, and welcomed the Commission's commitment to developing EU non-financial reporting standards[8].

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1 COM(2021) 390 final.https://eur-lex.europa.eu/resource.html?uri=cellar:9f5e7e95-df06-11eb-895a-01aa75ed71a1.0001.02/DOC_1&format=PDF

2 OJ L 330, 15.11.2014, p. 1, Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

3 OJ C 215, 5.7.2017, p. 1, Commission Communication C(2017) 4234 final.

4 OJ C 209, 20.6.2019, p. 1, Commission Communication C(2019) 4490 final.

5 COM/2019/640 final, Communication from the Commission on the European Green Deal, 2020 COM(2020) 440 final, Adjusted Commission Work Programme.

6 COM(2018) 97 final.

7 European Parliament resolution of 29 May 2018 on sustainable finance (2018/2007(INI)).

8 European Parliament resolution of 17 December 2020 on sustainable corporate governance (2020/2137(INI)).

The European Parliament also considered that non-financial information published by companies pursuant to the NFRD should be subject to a mandatory audit.

2.6 The NFRD, together with the Sustainable Finance Disclosure Regulation (SFDR)[9] and the Taxonomy Regulation[10], are the central components of the sustainability reporting requirements underpinning the EU's sustainable finance strategy.

2.7 The objective of this proposal is therefore to improve sustainability reporting in order to better harness the potential of the European single market to contribute to the transition towards a fully sustainable and inclusive economic and financial system, in accordance with the European Green Deal, including the Fit for 55 Package, and the UN Sustainable Development Goals.

3. General comments

3.1 Europe is currently emerging from a health emergency which has brought to the fore the need for a resilient financial and economic system to safeguard against unexpected crises in the future. As maintained by the European Central Bank, the pandemic has served as "a stark reminder that preventing climate change from inflicting permanent harm on the global economy requires a fundamental structural change to our economy, inducing systematic changes in the way energy is generated and consumed"[11]. At the same time, the ECB underlines that failing to act with urgency threatens human life itself, particularly the poorest and most vulnerable. High-quality non-financial corporate reporting is a crucial component in ensuring that both dimensions of the issue at hand are duly addressed.

3.2 Concurrently, progress on the Capital Markets Union will ensure that European industry, the backbone of which is comprised of SMEs contributing to more than half of European GDP[12], will continue to thrive, create quality jobs, and lead to the long-term competitiveness of the European Union. This progress is contingent on capital being allocated to companies that are transitioning to meet the goals of the Paris Agreement, and which will support the goals of the European Green Deal, as well as on ensuring that financial and sustainability education become an integral component of Europe's commitments.

3.3 High-quality, comparable, relevant corporate data, adhering to the double materiality approach, is a key prerequisite in ensuring that the financial sector is able to assess the sustainability profile of non-financial and financial clients and counterparties, enabling it to support its clients towards meeting the goals of the Paris Agreement. The EESC encourages the co-legislators to ensure that the proposal at hand meets this key objective, which will form the basis of a sustainable recovery from the COVID-19 pandemic, and ensure the long-term competitiveness and growth of the single market.

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9 OJ L 317, 9.12.2019, p. 1

10 COM/2018/355 final, OJ C 62, 15.2.2019, p. 103.

11 https://www.ecb.europa.eu/press/key/date/2020/html/ecb.sp200717~1556b0f988.en.html

12 https://ec.europa.eu/growth/smes_en

3.4 The European Financial Reporting Advisory Group is tasked with developing the technical standards ("standards") that will put the legislative text into practice. Following EFRAG's final report on the matter[13], the EESC would encourage the EU Platform on Sustainable Finance and the International Platform on Sustainable Finance to consult closely with EFRAG on assessing an appropriate level of granularity of the standards, ensuring that reporting entities provide data that is material and comparable. Owing to the fast pace of international developments in the field of sustainability reporting, including the widespread use of the GRI, SASB, and TCFD frameworks by companies and financial institutions alike, the EESC would recommend that the standards be informed by the key provisions of these frameworks. As also outlined by EFRAG, international cooperation in this regard should nonetheless not hamper the EU's ambition as a global leader in sustainability, in terms of the scope and speed of the development of the EU regulatory framework. Ensuring balanced representation of key stakeholder groups, including social partners, in the EFRAG's governing structure, will ensure this process is undertaken as robustly as possible.

3.5 Coherence in the adoption of sustainability reporting practices across all EU-27 jurisdictions will be crucial in the provision of comparable, high-quality data. The EESC would encourage the co-legislators to ensure that the negotiations lead to an outcome flexible enough so that the provisions of the Directive are not subject to extensive modification in the transposition process, given that a Regulation was not adopted. This element would be crucial in ensuring cohesive reporting requirements across the EU-27, prevent market fragmentation, and encourage the unhindered flow of capital equally across all jurisdictions. While the EESC fully expects that the forthcoming standards will be applied consistently across the EU-27, it is important to underline the importance of ensuring that the outcome of both the transposition of the CSRD and the standard-setting leads to high-quality, comparable and material disclosures of sustainability information across the EU-27. Previous empirical work undertaken by civil society has demonstrated significant regional differences, which may undermine this aim[14].

4. Specific Comments

4.1 Scope

4.1.1 The EESC welcomes the expanded scope of the Directive to include listed SMEs – with the exclusion of those listed on multilateral trading facilities (MTFs) or on SME growth markets – as well as the provisions for voluntary reporting for non-listed SMEs and the three-year transition period and simplified standard for listed SMEs. Due to the significant administrative and operational burdens faced by SMEs in procuring the appropriate data and preparing their reports, exacerbated by the effects of the COVID-19 pandemic, the EESC supports the current scope of the proposal in this regard. This balanced approach allows for a predictable pathway for SMEs to meet increasing expectations for sustainability information among their investors and wider stakeholders, while allowing for the flexibility and time to meet these requirements gradually and voluntarily.

13 https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/210308-report-efrag-sustainability-reporting-standard-setting_en.pdf

14 https://www.allianceforcorporatetransparency.org/assets/Research_Report_EUKI_2020.pdf, p. 51.

4.1.2 The EESC would recommend that the European Commission expedite a specific impact assessment and cost-benefit analysis devoted to the effects of the phase-in period and the simplified reporting standard on both listed and unlisted SMEs. A significant element of this analysis should include concrete empirical evidence and recommendations concerning the inclusion, within a reasonable period, of listed and unlisted SMEs operating in high-risk sectors, within the scope of the Directive. Should it be required, the European Commission should also consider additional support measures to assist SMEs in their forthcoming reporting requirements.

4.2 **Disclosure of risks and impacts along value chains**

4.2.1 The EESC welcomes the proposed Directive's approach of including reporting requirements covering the value chain of in-scope entities. Considering the complexity of modern value chains, the EESC would recommend clearer and more detailed qualifiers for when the whole-value chain approach to reporting should be adhered to, in line with the provision of the proposed Directive for this reporting to be done "as appropriate", as per Recital 29. As significant ESG risks and impacts result from activities in value chains, the EESC would like to emphasise that these additional specifications should not detract from the requirement to report in a way that promotes full transparency of the impacts of activities undertaken in value chains.

4.3 **Alignment of Reporting Requirements in terms of timing and content**

4.3.1 The EESC would emphasise that the success of the proposal is predicated on a careful sequencing and alignment of reporting requirements between the CSRD and other legislative frameworks. Especially as it pertains to the needs of those in-scope entities that are both users and preparers of non-financial information, it will be significant to ensure that enough time is allowed for the collection, assessment, and disclosure of the relevant data. Such coordination should ensure that the non-financial clients of financial in scope entities are required to disclose the data necessary in the first instance, subsequently allowing financial entities to assess it and prepare their own disclosures.

4.3.2 The European Commission and co-legislators should assess these sequencing requirements, especially as they influence those in-scope entities that will be subject to sustainability reporting requirements under the Capital Requirements Regulation[15], Article 8 of the Taxonomy Regulation[16], the SFDR Delegated Acts[17], and any forthcoming standards relating to the development of the Social Taxonomy, as well as other taxonomies. Complying with these requirements will be dependent on the availability of high-quality data provided on the basis of the proposal at hand. The information required through CSRD disclosures should be similar in scope to the data to be disclosed under these related requirements, including those of the delegated acts of the Taxonomy Regulation, which can be further clarified in the proposed Directive and in the work of EFRAG in developing the standards, as appropriate.

15 OJ L 176, 27.6.2013, p. 1.

16 OJ L 198, 22.6.2020, p. 13.

17 C(2021) 2800 final.

4.4 Assurance

4.4.1 The EESC recognises the significance of ensuring the high quality and verifiability of the non-financial data disclosed under the proposed Directive. The role of assurance is critical in this regard, and the EESC welcomes the proposal's recommendation for the use of limited assurance to verify the non-financial data of the in-scope entities.

4.4.2 Due to the absence of a commonly-agreed framework for the reasonable assurance of sustainability information and the premature quality of certain forms of non-financial data, it is recommended that the assurance requirements remain at the level of assessment required for limited assurance.

4.5 Human Rights

4.5.1 The EESC welcomes the more granular identification of sustainability topics on which data is to be disclosed, including those topics relating to the impacts on vulnerable communities and workers. In conjunction with the progress planned on the release of a proposal on Sustainable Corporate Governance, the EESC considers that the proposal at hand provides a significant opportunity for the development of a practical framework for the assessment of the financial risks derived from business operations influencing communities, while also promoting a sound understanding of the impacts of business operations on the same communities. The further specification of both the reporting and due diligence requirements should carefully balance the needs of the social partners, through a formal consultation right.

4.5.2 The EESC would encourage the co-legislators to consider a clearer definition of the stakeholders to be considered and consulted in this process, and to ensure the full alignment of these requirements with the provisions of the forthcoming proposal on Sustainable Corporate Governance. The process that companies should undertake to comply with stakeholder consultation requirements should, on the one hand, be underlined by identifying only the most relevant stakeholders, while, on the other, ensuring that these processes are appropriately designed, straightforward, and do not add undue complexity for the companies under the expanded scope of the proposed Directive.

4.6 Transition Planning

4.6.1 The EESC is supportive of the need for companies in transition to attract finance. The emphasis of the proposal on the need to report on the compatibility of business models and strategies with the transition to a sustainable economy and the limiting of global warming to 1.5°C is thus crucial. Considering the report of the International Energy Agency on achieving net-zero by 2050[18], ensuring robust, high-quality data to meet this requirement of the proposed Directive will be a crucial enabling factor in ensuring companies have credible transition plans, and that banks and capital markets may aid them in meeting their goals. The EESC would support more granularity in the requirements demonstrating this alignment, in a proportionate manner. Such

18 https://www.iea.org/reports/net-zero-by-2050

requirements should include further information on the transition scenarios adopted by corporates, as well as the elements determining their compatibility with the objectives of the Just Transition.

4.7 **Development of the EU non-financial reporting standards**

4.7.1 The EESC reiterates its support for the mandate extended to EFRAG for the provision of technical advice with regard to developing EU non-financial reporting standards. The EESC would like to draw attention to the fact that its mandate requires "proper due process, public oversight and transparency" including the consultation of a wide range of stakeholders in the development of the standards, and would emphasise the importance of ensuring that trade unions, wider social partners, SMEs, and other stakeholders with a material interest in the development of the standards, including financial and non-financial companies and civil society organisations, be included and consulted throughout the development of the technical advice. In this regard, the EESC supports the efforts undertaken by EFRAG to seek stakeholder views on the development of its due process[19], and expects an outcome that will ensure the inclusion of all aforementioned stakeholders.

Brussels, 22 September 2021

Christa SCHWENG
The president of the European Economic and Social Committee

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19 https://www.efrag.org/Assets/Download?assetUrl=%2fsites%2fwebpublishing%2fSiteAssets%2fEFRAG%2520Due%2520Process%2520Procedures_V04.pdf