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ESRS consultation regarding adoption as CSRD delegated acts

Dear Tom,

Once again a great thanks to you for your excellent presentation at our sustainability conference on Tuesday this week! Your explanations and remarks on the ESRS and the Commission's recent modifications were very much appreciated by our audience. Please allow us to let you have our comments on the Commission's ESRS consultation hereafter:

Materiality approach:
We welcome the Commission's decision to strengthen the materiality assessments as essential fundament for sustainability reporting. This will allow companies to focus on the crucial company-specific issues and topics. As the materiality assessment is subject to limited assurance it must consequently be substantiated by the company. Moreover, it guarantees transparency without overloading reports with unnecessary information.
In order to not undermine the Commission's decision, it is of crucial importance that the SFDR is made subject to the same understanding/definition of materiality as the CSRD. Both regulatory frameworks are part of the same reporting ecosystem and must be aligned. Misalignments will create legal uncertainties to the disadvantages of data preparers and users alike and must be avoided. This has to be borne in mind especially with regard to the forthcoming revision of the SFDR.
The development of guidance for the materiality analysis would be helpful, e.g. concerning scale, scope, likelihood, irremediability and the basis of risk conclusions (inherent or residual risk basis?). In this context: The option to evaluate the impact of risk not only in monetary terms but also qualitatively should be granted.

Phase-in approach:
We also welcome the decision of the European Commission to add additional phase-ins to the ESRS. The phase-in approach allows preparers to focus on the most material topics first while consecutively implementing new reporting obligations over the next years in order to make the new framework manageable for them. However, as the capacities of data preparers will be exhausted for the forthcoming years due to complex implementing exercises, the development of additional sector-specific reporting obligations on the European stage should be halted for the time being.

Voluntary disclosures:
In addition, we welcome the revised proposal of the European Commission turning numerous disclosure requirements proposed by EFRAG as mandatory into voluntary disclosure requirements. Especially smaller companies, which are obliged to publish sustainability information for the first time, will benefit from this approach.

Interoperability with global initiatives:
Compatibility of the ESRS with international standard works is of key importance in order to not expose preparers to the jeopardy of double reporting. From this perspective we welcome the intention of both the European Commission and the ISSB to achieve interoperability to the maximum extent. However, further efforts are needed in order to achieve that objective. In terms of materiality analysis, some fundamental differences still exist between the ESRS and the ISSB standards as the understanding of materiality is subject to different scopes.

Integrated reporting:
An option for integrated reporting would be appreciated for the benefit of drawing a holistic picture of the company's value creation. Integrated reports are capable of both aiding in avoiding redundancies and producing positive effects on the company’s management. In addition, it would also be a step in the right direction in terms of compatibility with the ISSB standards.

Value chain:
At present, the value chain reporting requirements of the ESRS are very broad as they correspond to a wide definition of the value chain. Guidance on the scope of the value chain and the extent to which it should be considered for the individual disclosure points is desirable. Also, templates and guidelines for standardized tables for key figures to be disclosed would be helpful in order to facilitate tagging and to strengthen comparability, analogous to the precisely specified reporting sheets of the EU Taxonomy Regulation.
The value chain definition must be more specific as the current draft standard does not set any boundary, neither upstream nor downstream. For examples concerning ESRS S2, if all workers in the value chain have to be covered, an almost infinite number of workers in the value chain of large companies would fall under this requirement. Some companies already have a five-digit number of suppliers at Tier 1 level. Particularly for the value chain outside the EU, this will be a huge challenge for many years to come. It would be even more challenging to disclose information related to workers in the downstream value chain. Coherence with the CSDDD, which is still subject to legislative proceedings, must be achieved.

Other isues:
Unnecessary disaggregation of disclosures should be strictly limited. Concerning Group-reporting, disclosures should represent Group-data without additional disaggregation as this would extend the Sustainability Statement even more without adding value for users. Any additional disaggregation should be left to the discretion of the reporting company in case it is assessed “material” for specific splitting.

Furthermore, resource plans to be reported should be kept to a general level. We do not see any advantages for data users to detail any resource plans. In contrast, these would be disclosures requiring a lot of internal effort.

We urge the European Commission to work towards an alignment of the ESRS with the Taxonomy and the Sustainable Finance Disclosure Regulation (SFDR), especially with reference to the concrete wording and the numbering, for example for circular economy: ESRS E5 refers to "Resource use and circular economy", but the environmental goal of the EU Taxonomy is goal 4, named "Transition to a circular economy". The materiality assessment should equally apply for SFDR disclosures.

The procedure for the planned tagging of the new sustainability report is still unclear in many parts and does not seem feasible at present. It is therefore advisable to postpone the tagging requirement until reporting year 2025 or later. Companies could then also focus more on the content of the disclosures.

We would welcome a more concrete specification of the connectivity with financial key figures. Possibly, adjusting the financial key figures that the respective company uses to manage its business activities would then be useful.

Clear and globally valid definitions should be provided for the required KPIs, e.g. non-employee workers, basic wage, pay category, decent pay. The scope for interpretation of the terms is high and fraught with uncertainty. Especially countries outside the EU often have a different understanding of the topics.

In some cases, there is no legal clarity regarding mandatory disclosure requirements and their compatibility with the GDPR and local legislations. Examples include pay transparency and people with disabilities.
We kindly ask you to take our remarks into consideration in the forthcoming adoption process. Please do not hesitate to contact us in case of questions.

Kind Regards,

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